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# S. 1684—S. 1724—S. 1728

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# HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

## S. 1684

TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN CHILOCCO INDIAN SCHOOL LANDS IN TRUST FOR THE KAW, OTOE-MISSOURIA, PAWNEE, PONCA, AND TONKAWA INDIAN TRIBES OF OKLAHOMA

## S. 1724

TO AUTHORIZE THE CHEROKEE NATION OF OKLAHOMA TO DESIGN AND CONSTRUCT HYDROELECTRIC POWER FACILITIES AT W.D. MAYO LOCK AND DAM

## S. 1728

TO AUTHORIZE THE CHEROKEE NATION OF OKLAHOMA TO LEASE CERTAIN LANDS HELD IN TRUST FOR UP TO NINETY-NINE YEARS

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OCTOBER 23, 1985, WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
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## SELECT COMMITTEE ON INDIAN AFFAIRS

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# S. 1684—S. 1724—S. 1728

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WEDNESDAY, OCTOBER 23, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.*

The committee met, pursuant to recess, at 10 a.m., in room 562, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senator Burdick.

Staff present: Peter S. Taylor, staff director, and Michael Mahsetky and John Vance, staff attorneys.

Senator BURDICK. Good morning. Our hearing this morning is on three bills which affect the Cherokee Nation of Oklahoma and other tribes in Oklahoma.

The first of these bills, S. 1724, authorizes the construction of an imaginative hydroelectric power installation at the W.D. Mayo Dam on the Arkansas River. This proposal has been carefully planned and authorized by the tribe and the Corps of Engineers working closely together.

There are two most appealing aspects to the bill. It will enable the Cherokee Nation to have increased electricity for sale and use, and it does not require construction of a new dam or expenditure of Federal funds.

The second bill, S. 1728, simply authorizes the Cherokee Nation to lease certain lands held in trust for up to 99 years rather than the 25 years which is presently authorized. Congress has authorized such leases many times throughout the years resulting in a benefit to the tribes.

The third bill, S. 1684, affects the transfer of certain lands on the Chilocco Indian School so that they are held in trust by the United States for the Cherokee, Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma.

[An opening statement of Senator Mark Andrews appears, followed by the three bills, S. 1684, S. 1724, and S. 1728. Text resumes on page. 16.]

## OPENING STATEMENT OF SENATOR MARK ANDREWS

GOOD MORNING! OUR HEARING THIS MORNING IS ON THREE BILS WHICH AFFECT THE CHEROKEE NATION OF OKLAHOMA, AND OTHER TRIBES IN OKLAHOMA.

THE FIRST OF THESE BILLS, S. 1724, AUTHORIZES THE CONSTRUCTION OF AN IMAGINATIVE HYDROELECTRIC POWER INSTALLATION AT THE W.D. MAYO DAM ON THE ARKANSAS RIVER. THIS PROPOSAL HAS BEEN CAREFULLY PLANNED AND AUTHORIZED BY THE TRIBE AND THE CORPS OF ENGINEERS WORKING CLOSELY TOGETHER. THERE ARE TWO MOST APPEALING ASPECTS TO THE BILL: IT WILL ENABLE THE CHEROKEE NATION TO HAVE INCREASED ELECTRICITY FOR SALE AND USE... AND... IT DOES NOT REQUIRE CONSTRUCTION OF A NEW DAM OR EXPENDITURE OF FEDERAL FUNDS.

THE SECOND BILL, S. 1728, SIMPLY AUTHORIZES THE CHEROKEE NATION TO LEASE CERTAIN LANDS HELD IN TRUST FOR UP TO 99 YEARS RATHER THAN THE 25 YEARS WHICH IS PRESENTLY AUTHORIZED. CONGRESS HAS AUTHORIZED SUCH LEASES MANY TIMES THROUGHOUT THE YEARS RESULTING IN A BENEFIT TO THE TRIBES.

THE THIRD BILL, S. 1684, AFFECTS THE TRANSFER OF CERTAIN LANDS ON THE CHILOCCO INDIAN SCHOOL SO THAT THEY ARE HELD IN TRUST BY THE UNITED STATES FOR THE CHEROKEE, KAW, OTOE-MISSOURIA, PAWNEE, PONCA AND TONKAWA INDIAN TRIBES OF OKALHOMA.

THE FIRST WITNESS THIS MORNING IS CONGRESSMAN MIKE SYNAR OF OKLAHOMA.

II

99TH CONGRESS
1ST SESSION

# S. 1684

To declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma.

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 16), 1985

Mr. NICKLES (for himself and Mr. BOREN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. The purpose of this Act is to carry out an agreement entered into between—

(1) the Cherokee Nation of Oklahoma, and

(2) the following Indian tribes:

(A) the Kaw Tribe of Oklahoma,

(B) the Otoe-Missouria Tribe of Oklahoma,

(C) the Pawnee Tribe of Oklahoma,

(D) the Ponca Tribe of Oklahoma, and

(E) the Tonkawa Tribe of Oklahoma.

SEC. 2. (a) Subject to the provisions of this Act, all rights, title, and interests of the Cherokee Nation of Oklahoma in the surface estate of the lands described in subsection (b) (including all improvements thereon and appurtenances thereto) are hereby transferred to the Indian tribes listed in section 1(2) as tenants in common and the United States is hereby declared to hold such rights, title, and interests in trust for the benefit of the Indian tribes listed in section 1(2).

(b) The lands referred to in subsection (a) are the following lands, consisting of 4,262.32 acres, more or less, located in Oklahoma in Township 29 North, Range 2 East, Indian Meridian:

Section 14, lots 1 to 4 inclusive, S 1/2 N 1/2, and S 1/2, 626.16 acres.

Section 15, lots 1 to 4 inclusive, S 1/2 N 1/2, and S 1/2, subject to right-of-way for Saint Louis and San Francisco Railroad, 626.92 acres.

Section 16, lots 1 and 2, S 1/2 NE 1/4, and SE 1/4, subject to right-of-way for Saint Louis and San Francisco Railroad, 313.91 acres.

Section 21, E 1/2 and those portions of NW 1/4 and SW 1/4 lying east of the west right-of-way line of the Saint Louis and San Francisco Railroad, 489.74 acres.

Section 22, all, 640 acres.

Section 23, all, 640 acres.

Section 24, that portion of NW 1/4 and SW 1/4, lying west of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, 235.25 acres.

Section 25, that portion of NW 1/4 and N 1/2 SW 1/4 lying west of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, 57.30 acres.

Section 26, all (except that portion of lot 1 lying east of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, containing 12.68 acres), 633.04 acres.

(c) Notwithstanding any other provision of this Act or of any other law, the beneficial interests of the Indian tribes listed in section 1(2) in the surface estate of the lands described in subsection (b) may be divided into 5 separate parcels of land under an agreement entered into by such tribes that is approved by the Secretary. After such a division, the United States shall hold the portion of such surface estate allocated to each of such tribes under such agreement in trust for the exclusive benefit of such tribe.

SEC. 3. (a) Subject to the provisions of this Act, 50 percent of all rights, title and interests of the Cherokee Nation of Oklahoma in the mineral estate of the lands described in subsection (c) are hereby transferred to the Indian tribes listed in section 1(2) as tenants in common and the United States is hereby declared to hold such transferred rights, title, and interests in trust for the benefit of the Indian tribes listed in section 1(2).

(b) Except as otherwise provided in this Act, the Cherokee Nation of Oklahoma and the Indian tribes listed in section 1(2) shall hold their interests in the mineral estate of the lands described in subsection (c) as tenants in common.

(c) The lands referred to in subsections (a) and (b) are the following lands, consisting of 5,824.13 acres, more or less, located in Oklahoma in Townships 29 North, Range 2 East, Indian Meridian:

Section 13, lot 4, SW 1/4 of the NW 1/4, W 1/2 of the SW 1/4 and the portion of lot 3, SE 1/4 of the NW 1/4 and E 1/2 of the SW 1/4 lying west of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, 281.17 acres.

Section 14, lots 1 to 4 inclusive, S 1/2 N 1/2, and S 1/2, 626.16 acres.

Section 15, lots 1 to 4 inclusive, S 1/2 N 1/2, and S 1/2, subject to right-of-way for Saint Louis and San Francisco Railroad, 626.92 acres.

Section 16, lots 1 and 2, and S 1/2 NE 1/4, and SE 1/4, subject to right-of-way for Saint Louis and San Francisco Railroad, 313.91 acres.

Section 21, E 1/2 and those portions of the NW 1/4 and the SW 1/4 lying east of the west right-of-way line of the Saint Louis and San Francisco Railroad, 489.74 acres.

Section 22, all, 640 acres.

Section 23, all, 640 acres.

Section 24, that portion of NW 1/4 and SW 1/4, lying west of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, 235.25 acres.

Section 25, that portion of NW 1/4 and N 1/2 SW 1/4 lying west of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad, 57.30 acres.

Section 26, all (except that portion of lot 1 lying east of the east right-of-way line of the Atchison, Topeka and Santa Fe Railroad containing 12.68 acres) 633.04 acres.

Section 27, all, 642.76 acres.

Section 28, all, 637.88 acres.

SEC. 4. Nothing in this Act shall deprive any person (other than the Cherokee Nation of Oklahoma) of any right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the surface or mineral estate of any lands described in section 3(c) on the date preceding the date of enactment of this Act.

SEC. 5. (a) All rents, royalties, grazing fees, and other income derived from the lands described in section 3(c) which remain unexpended after all necessary maintenance costs for such lands incurred prior to the date of enactment of this Act have been paid shall be transferred as follows:

(1) of the portion of such funds derived from the surface estate of such lands—

(A) 75 percent shall be transferred to the joint credit of the Indian tribes listed in section 1(2), and

(B) 25 percent shall be transferred to the credit of the Cherokee Nation of Oklahoma; and

(2) of the portion of such funds derived from the mineral estate of such lands—

(A) 50 percent shall be transferred to the joint credit of the Indian tribes listed in section 1(2), and

(B) 50 percent shall be transferred to the credit of the Cherokee Nation of Oklahoma.

(b) Funds transferred under subsection (a) may only be used for maintenance, repair, or development of lands described in section 3(c), including any improvements thereon or appurtenances thereto.

○

II

99TH CONGRESS
1ST SESSION

# S. 1724

To authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric power facilities at W.D. Mayo Lock and Dam.

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 30), 1985

Mr. BOREN (for himself and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric power facilities at W.D. Mayo Lock and Dam.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. (a) Notwithstanding any other provision of law, the Cherokee Nation of Oklahoma is hereby authorized to design and construct the addition of hydroelectric generating facilities to the W.D. Mayo Lock and Dam on the Arkansas River in Oklahoma that is described in the report of the Chief of Engineers dated December 23, 1981, if the agreement described in subsection (b) is executed by all parties described in subsection (b).

(b) The Secretary of the Army, acting through the Army Corps of Engineers, and the Secretary of Energy, acting the Southwestern Power Administration shall enter into a binding agreement with the Cherokee Nation of Oklahoma under which—

(1) the Cherokee Nation of Oklahoma agrees—

(A) to design and initiate construction of the generating facilities referred to in subsection (a) within 3 years after the date of such agreement,

(B) to reimburse the Secretary of the Army for the costs incurred by the Army Corps of Engineers in—

(i) approving such design and inspecting such construction, and

(ii) providing any assistance authorized under subsection (c)(2),

(C) to release and indemnify the Federal Government from any claims, causes of action, or liability which may arise from such design or construction, and

(2) the procedures and requirements for approval and acceptance of such design and construction are set forth,

(3) the rights, responsibilities, and liabilities of each party to the agreement are set forth, and

(4) the amount of the payments under section 2(b), and the procedures under which such payments are to be made, are set forth.

(c)(1) No Federal funds may be expended for the design or construction of the generating facilities referred to in subsection (a) prior to the date on which such facilities are accepted by the Secretary of the Army under subsection (d).

(2) Notwithstanding any other provision of law, the Secretary of the Army, through the Army Corps of Engineers is authorized to provide, on a reimbursable basis, any assistance requested by the Cherokee Nation of Oklahoma in connection with the design or construction of the generating facilities referred to in subsection (a).

(d) Notwithstanding any other provision of law, upon completion of the construction of the generating facilities referred to in subsection (a) and final approval of such facilities by the Secretary of the Army—

(1) the Cherokee Nation of Oklahoma shall transfer title to such facilities to the United States, and

(2) the Secretary of the Army shall—

(A) accept the transfer of title to such generating facilities on behalf of the United States, and

(B) operate and maintain such facilities through the Army Corps of Engineers.

SEC. 2. (a) The Southwestern Power Administration shall market the excess power produced by the generating facilities referred to in section 1(a) in accordance with section 5 of the Act of December 22, 1944 (58 Stat. 890; 16 U.S.C. 825s).

(b) Notwithstanding any other provision of law, the Secretary of Energy, through the Southwestern Power Administration, is authorized to pay to the Cherokee Nation of Oklahoma, in accordance with the terms of the agreement entered into under section 1(b), out of the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the United States Army Corps of Engineers and marketed by the Southwestern Power Administration—

(1) all of the costs incurred by the Cherokee Nation of Oklahoma in the design and construction of the generating facilities referred to in section 1(a), including the capital investment in such facilities and interest on such capital investment, and

(2) for a period not to exceed 50 years, a reasonable annual royalty for the design and construction of the generating facilities referred to in section 1(a).

(c) Notwithstanding any other provision of law, the Secretary of Energy, through the Southwestern Power Administration, is authorized—

(1) to construct such transmission facilities as necessary to market the power produced at the generating facilities referred to in section 1(a) with funds contributed by non-Federal sources, and

(2) to repay those funds, including interest and any administrative expenses, directly from the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the United States Army Corps of Engineers and marketed by the Southwestern Power Administration.

SEC. 3. There are authorized to be appropriated for the fiscal year in which title to the generating facilities is transferred and accepted under section 1(d), and for each succeeding fiscal year, such sums as may be necessary to operate and maintain such facilities and to market the power from such facilities.

SEC. 4. (a) Notwithstanding section 7871, section 103(m), and any other provision of section 103 of the Internal Revenue Code of 1954 (except subsections (c) and (j) of section 103 of such Code), any obligation issued by the Cherokee Nation of Oklahoma, substantially all the proceeds of which are used to design or construct the generating facilities referred to in section 1(a), shall be treated as an obligation described in section 103(a)(1) of such Code for all purposes of such Code.

(b) No provision of law shall affect the applicability of subsection (a) unless such other law specifically cites subsection (a).

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II

99TH CONGRESS
1ST SESSION

# S. 1728

To authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to ninety-nine years.

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 2 (legislative day, SEPTEMBER 30), 1985

Mr. NICKLES (for himself and Mr. BOREN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

# A BILL

To authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to ninety-nine years.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Cherokee Leasing Act".

## SEC. 2. AUTHORIZATION FOR 99-YEAR LEASE.

The second sentence of subsection (a) of the first section of the Act entitled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases" approved August 9, 1955 (25

U.S.C. 415), is amended by inserting ", lands held in trust for the Cherokee Nation of Oklahoma," after "the Twenty-nine Palms Band of Luiseno Mission Indians,".

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Senator **Burdick**. The first witness this morning is Congressman Mike Synar of Oklahoma. Congressman, welcome to the committee.

Mr. **Synar**. Thank you, Quentin. I appreciate it very much and I will be brief.

## STATEMENT OF HON. MIKE SYNAR, A MEMBER OF CONGRESS FROM THE STATE OF OKLAHOMA

Mr. **Synar**. I want to thank you for this opportunity to appear before the subcommittee today. I realize that all our schedules are busy. The legislation under consideration by the subcommittee is S. 1724, which was introduced by Senator David Boren from my State, and I have a companion bill which I recently introduced in the House which will allow the Cherokee Nation of Oklahoma to take great strides in improving the economic well-being of its people and its future generations.

This legislation, very simply, will provide the authority for the Corps of Engineers to own, operate, and maintain a hydroelectric generating facility that the Cherokee Nation intends to design, construct, and finance. Now, the Cherokees have proposed to provide 100 percent—and I want to emphasize that—100 percent of the financing for adding a hydroplant to the existing W.D. Mayo Lock and Dam No. 14 on the Arkansas River.

Upon completion, the Corps of Engineers would assume ownership of the facility and operate the plant in connection with its current responsibilities at the lock and dam. Power from the 40-megawatt facility would be marketed by the Southwestern Power Administration, thereby providing needed low cost electricity for the preference customers. In turn, the power sales will cover the Federal costs associated with the corps' maintenance of the powerplant, reimbursement costs associated with construction of the facility by the Cherokees, and a reasonable annual royalty payment to help secure the economic well-being of the tribe.

Mr. Chairman, the arrangement I have just outlined has been the source of extensive discussions by all parties involved. And indeed I believe that all of these parties are in agreement about the enormous near- and long-term benefits offered by this proposal.

Perhaps most important, this bill provides exciting opportunities. It provides the Cherokee Nation the opportunity to create as many as 400 jobs in an area that continues to experience excessive unemployment. It also provides the tribe the opportunity to expand its economic development program into a first-of-a-kind venture that offers financial stability and prosperity for years to come.

In addition, it provides a unique and as yet untested experiment in connection with this administration's policy to seek out new partnerships with non-Federal interests in financing water development projects.

I think we are all well aware of the tremendous budget restraints facing the Government today. This bill offers economic benefits to the Cherokee Nation and regional electricity consumers without expending any Government funds. The Cherokees are willing to accept the full financial responsibility for this novel proposal. I commend them for their courage and foresight. And I also commend them for bringing forth what I hope becomes the benchmark for similar future efforts to provide local economic development opportunities while recognizing the severe budgetary limitations we face as a Nation.

For these reasons, Mr. Chairman, I believe that this is an innovative proposal that deserves the full support of Congress, and I look forward to working with this subcommittee to assure that this unique opportunity is not lost. Again, let me thank you for allowing me to spend some time with you today.

Senator BURDICK. Well, Congressman, thank you very much.

[Mr. Synar's prepared statement follows:]

## STATEMENT OF REP. MIKE SYNAR (D-OKLA.)
## BEFORE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

October 23, 1985

Mr. Chairman, I want to thank you for this opportunity to appear before the Subcommittee today. I realize that your schedule is busy and I will try to be brief. Legislation under consideration by the Subcommittee today, S.1724, and a companion bill which I have recently introduced in the House, will allow the Cherokee Nation of Oklahoma to take great strides in improving the economic well-being of its people and its future generations. This legislation will provide authority for the Army Corps of Engineers to own, operate and maintain a hydro-electric generating facility that the Cherokee Nation intends to design, construct and finance. The Cherokees have proposed to provide 100% -- and I emphasize 100% -- of the financing for adding a hydro plant to the existing W.D. Mayo Lock and Dam No. 14 on the Arkansas River. Upon completion, the Corps of Engineers would assume ownership of the facility and operate the plant in connection with its current responsibilities at the lock and dam. Power from the 40 Mega-Watt facility would be marketed by the Southwestern Power Administration, thereby providing needed low-cost electricity for its preference customers. In turn, the power sales will cover the Federal costs associated with the Corps' maintenance of the power plant, reimbursement costs associated with construction of the facility by the Cherokees and a reasonable annual royalty payment to help secure the economic well-being of the Tribe.

Mr. Chairman, the arrangement I have just outlined has been the source of extensive discussions by all parties involved. Indeed, I believe that all of the parties are in agreement about the enormous near and long-term benefits offered by this proposal.

Perhaps most important, this bill provides exciting opportunities. It provides the Cherokee Nation the opportunity to create as many as 400 jobs in an area that continues to experience excessive unemployment. It also provides the Tribe the opportunity to expand its economic development program into a first-of-a-kind venture that offers financial stability and prosperity for years to come.

In addition, it provides a unique and as yet untested experiment in connection with this Administration's policy to seek out new partnerships with non-Federal interests in financing water development projects.

We are all well aware of the tremendous budget constraints facing the government today. This bill offers economic benefits to the Cherokee Nation and regional electricity consumers without expending any Government funds. The Cherokees are willing to accept the full financial responsibility of this novel proposal. I commend them for their courage and foresight. And I also commend them for bringing forth what I hope becomes the benchmark for similar future efforts to provide local economic development opportunities while recognizing the severe budgetary limitations we face as a Nation.

For these reasons I believe that this innovative proposal deserves the full support of the Congress and I look forward to working with the Subcommittee to assure that this unique opportunity is not lost. Again, I thank you for allowing me to take some of your time today.

Senator **Burdick**. I understand from your testimony that you're very much in favor of S. 1724.

Mr. **Synar**. Yes, sir.

Senator **Burdick**. Thank you very much.

Mr. **Synar**. Thank you.

Senator **Burdick**. I understand that Senator Nickles and Senator Boren are not present this morning. They were to be witnesses. In lieu of their absence, we will accept their written testimony as if given.

[Statements of Senators Nickles and Boren on S. 1684, S. 1724, and S. 1728, follow. Text resumes on p. 28.]

# STATEMENT OF SENATOR NICKLES

October 23, 1985

Mr. Chairman, it is with pleasure that I come before you today to speak on behalf of the three bills being considered today, S.1684, S.1724 and S.1728, which all involve the Cherokee Nation of Oklahoma.

As you are aware Mr. Chairman, especially in light of Ross Swimmers confirmation hearing last week, the Cherokee Nation is involved in numerous development projects. These three bills represent their dedicated work and efforts in this regard, and have my wholehearted support.

Senate bill 1684 is a bill that represents a culmination of efforts by several Oklahoma Tribes. As you know, Mr. Chairman, Public Law 93-599 gave the Bureau of Indian Affairs the authority to dispose of the Chilocco Indian School lands in north central Oklahoma. The Cherokee Nation, whom the Associate Solicitor for Indian Affairs determined to be the only qualified transferee of the lands, has worked together with the five tribes of the Pawnee Agency to reach a suitable agreement to divide the land. The five tribes of the Pawnee Agency are the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa.

After about five years of negotiation, the six tribes have reached an agreement on the division of the surface and mineral rights of the Chilocco lands. They are certainly to be commended for their efforts, and I encourage the timely passage of this legislation to complete the federal governments disposition of these lands to the tribes.

Senate bill 1724 represents one of the most ambitious and worthwhile projects of an Indian tribe that I have seen. This legislation would authorize the Cherokee Nation of Oklahoma to finance, design and construct hydroelectric generating facilities at W.D. Mayo Lock and Dam Number 14 near Sallisaw, Oklahoma. This plant will add needed low-cost power to the Southwest Federal Power System and will benefit the Cherokee Nation by providing resources for employment, better educational opportunities, and other facilities for the economic advancement of tribal members. It is my belief that this project can be done in a more timely and cost effective manner through the Cherokee Nation than could be obtained through the federal government. Intial construction will not cost the federal government anything.

This project represents the continued and successful efforts of the Cherokee Nation to move towards self-sufficiency. Prompt passage of this legislation will be most helpful in getting this project started and the necessary power provided to the Southwest Federal Power System.

Senate bill 1728 would amend the U.S. Code (25 U.S.C. 415) to allow the Cherokee Nation to lease certain lands held in trust for up to 99 years. The Cherokee Nation is in need of such authorization to avert lease problems, such as those they are currently encountering with the Muskogee Port Authority. Passage of this legislation will allow the tribe and the port authority to settle their current litigation in an agreeable fashion..

Mr. Chairman, thank you for your inviting me to testify today. I encourage this committees prompt consideration and passage of the three measures I have outlined.

Senator David L. Boren, statement on S. 1684

Mr. Chairman,

I have joined with Sen. Nickles in introducing S. 1684, a bill to provide for the disposition of lands comprising the former Chilocco Indian School in Oklahoma. As you know, Chilocco School was closed as an off-reservation boarding school several years ago.

In the years since the closure, negotiations have been conducted by the several tribes which have historic claims to the Chilocco lands. These tribes include the Kaw, Otoe-Missouria, Pawnee, Ponco, Tonkawa and Cherokees. Upon successful completion of these negotiations, tribal representatives approached both Senator Nickles and myself to request introduction of legislation to implement the agreed upon disposition. The bill you are considering today, S. 1684, is the result.

It is important that these Chilocco lands be utilized in a way that is most beneficial to the tribes. Enactment of our bill will allow the Secretary of Interior to take these lands into trust for the tribes, thereby making it possible for them to proceed with economic development plans for the property. This goal of greater tribal self-development is one which I support, and I believe passage of this legislation will help further that objective.

Mr. Chairman, I appreciate your assistance in expediting consideration of S. 1684, and I will be happy to assist you and the Committee in every way possible in completing action on it.

Senator David L. Boren, statement on S. 1724

Mr. Chairman:

I am here today to urge the Committee to give favorable consideration to S. 1724, a bill to authorize the Cherokee Nation to design and construct the addition of hydro - electric generating facilities to the W.D. Mayo Lock and Dam near Sallisaw, Oklahoma. The financing , engineering design, and actual construction of the addition will be accomplished by the Cherokee Nation of Oklahoma. The design and construction will be approved and inspected by the United States Army Corps of Engineers. At the completion of construction, the Corps of Engineers will own, operate, and maintain the facilities.

Under this legislation, the Southwestern Power Administration will market the power produced at the facilities in accordance with Section 5 of the 1944 Flood Control Act. The Southwestern Power Administration will be authorized to repay the Cherokee Nation the costs incurred for design and construction only after completion of the facilities and revenues can be realized from the sale of power.

The Cherokee Nation is striving to broaden their business base in a depressed geographical area and in what can only be described as a depressed regional economy. For these reasons the development of hydroelectric power on the Arkansas River makes sense as a tribal development.

The Nation is prepared to bring 100% of the financing to the table to facilitate developing these facilities at the Mayo Lock and Dam. It is their intent to keep within the Administration's water project financing and cost sharing policies.

Given the existing situation on the Arkansas River, with the Corps' ownership and operation of all the locks, dams, and hydroelectric generation facilities within a reasonable distance up and down the river from W.D. Mayo, it appears that the public interest would best be served by the Corps' operation of the hydroelectric facility at the Mayo site. This would result in the most efficient management and operation of this water resource, as well as maximum compatibility with the existing system. Also, utilizing the existing infrastructure would negate the need to hire and train additional personnel, or construct new power lines.

As has been stated, it is the Cherokee Nation's intent to provide the financing and development of the project in return for a reasonable royalty. This project will provide, in the near term, much needed jobs in Northeastern Oklahoma. Most importantly though, the income stream from this project will enhance the possibility of Tribal independence from federal subsidy programs. I applaud the efforts of the Cherokee Nation to expand their capabilities and I ask my colleagues to join with me in support of their efforts.

Senator David L. Boren, statement on S. 1728

Mr. Chairman,

On October 2, 1985, Senator Nickles and I introduced S. 1728, a bill authorizing the Cherokee Nation of Oklahoma to enter into a 99 year lease with the Muskogee Port Authority.

Current law does not permit the Bureau of Indian Affairs to authorize tribal leases beyond 25 years. In view of this limitation, tribes must have legislative authorization to enter into leases for periods longer than 25 years. In the past, many tribes have asked for and received such authorization.

The purpose of our bill is to permit the Cherokee Nation to negotiate such a long-term lease. As you know, the Cherokees successfully litigated their claim to the Arkansas River bed several years ago. As a result, the Cherokees have sought to negotiate a new lease for the land on which the Muskogee Port Authority operates. This has, in turn, led to new litigation between the Port Authority and the Cherokees.

I am pleased that both parties in the present litigation have agreed to settle their dispute if Congress grants the Cherokee Nation authority to negotiate a new long-term lease for the Port Authority's land. Congressional action on this matter will thereby permit resolution of a problem which both the Cherokees and the Port Authority have agreed to settle.

Mr. Chairman, I appreciate your assistance in scheduling this proposal for prompt consideration by your Committee. I will be happy to assist you and the Committee in any way possible to clear the way for favorable action in this matter.

Senator BURDICK. Now we'll go to the panel, which is composed of Hazel Elbert, Acting Deputy Assistant Secretary, Department of the Interior, Washington, DC; and whoever is with her.

Hazel Elbert.

Ms. ELBERT. Yes, sir.

Senator BURDICK. This is your panel, get them together.

Ms. ELBERT. I'm sorry. I apologize for our tardiness. Which bill do we want to start with first, Mr. Chairman?

Senator BURDICK. All three.

Ms. ELBERT. All three of them?

Senator BURDICK. Pick any one. We've just heard some testimony on the first one, S. 1724.

Ms. ELBERT. Thank you, Mr. Chairman.

## STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER AND MICHAEL COX

Ms. ELBERT. I am pleased to be here to present the views of the Department of the Interior on S. 1724, a bill to authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric facilities at W.D. Mayo Lock and Dam.

The provisions of S. 1724 which relate to the Cherokee Nation of Oklahoma are still under study within the administration. We defer to the Department of the Army, the Department of Energy, the Department of Justice, and the Department of the Treasury as to the provisions which may affect these agencies.

We understand that these agencies have technical and policy concerns with the bill as presently drafted, and we recommend that these agencies be requested by the chairman to submit their views. We further understand that the other agency concerns may include the terms of the agreement, the size and terms of the loan and its repayment, the tax forgiveness aspects of section 4, and the effect on certain pending lawsuits concerning rights to hydropower licenses at certain existing dams.

Section 1 of S. 1724 authorizes the Cherokee Nation of Oklahoma to design and construct the addition of hydroelectric generating facilities to the W.D. Mayo Lock and Dam on the Arkansas River near Sallisaw, OK. This section also provides that the Secretary of the Army, through the Corps of Engineers, the Secretary of Energy, acting through the Southwestern Power Administration, and the

Cherokee Nation may enter into a binding agreement under which the nation agrees to design and initiate construction of the generating facilities within 3 years after the date of agreement, reimburse the Secretary of the Army for costs incurred by the corps in connection with the project's design or construction, and release the Federal Government from any claims, cause of action, or liability which may arise from such design or construction.

The agreement shall also set forth the procedures and requirements for approval and acceptance of such design and construction, as well as the rights, responsibilities, and liabilities of each party to the agreement.

Finally, the agreement shall set forth the amount of the payments and the procedures under which certain payments are to be made to the nation by the Secretary of Energy out of the revenues from the sale of power produced by the generating facilities.

Section 2 of the bill directs the Southwestern Power Administration to market the power produced by the generating facilities. This section specifically authorizes the Secretary of Energy to repay the Cherokee Nation the following costs: First, the costs incurred for the design and construction from the revenues from the sale of power produced by the generating facilities; and second, for a period not to exceed 50 years, a reasonable annual royalty for the design and construction of project generating facilities.

Section 3 authorizes appropriations for the operation and maintenance of the generating facilities by the Army Corps of Engineers once they receive title to such facilities from the Cherokee Nation, upon completion of the facilities. By contrast, in all reclamation projects, O&M costs are included as part of the power rates. However, we defer to the Corps of Engineers on section 3.

Finally, section 4 provides that the interest on the Cherokee Nation's obligations used to finance the design and construction under section 1 is exempt from taxation. We defer to the Department of the Treasury on section 4, as well as the question whether section 7871(c) of the Internal Revenue Code of 1954 might already exempt the interest from such obligations from taxation.

It would appear that the authority which would be provided the Cherokee Nation of Oklahoma by enactment of S. 1724, to design and construct the addition of the generating facilities to the W.D. Mayo Lock and Dam near Sallisaw, OK, could have a positive impact on the economy of the Cherokee Nation, its individual members, as well as the communities of Sallisaw and Tahlequah, by providing additional employment opportunities. At the same time, there are numerous other concerns with S. 1724 which need to be clarified before the Department of the Interior could support the provisions of this legislation.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you may have.

Senator BURDICK. Thank you very much.

[Ms. Elbert's prepared statement on S. 1724, on behalf of the Department of the Interior, follows:]

# STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, ON S. 1724, A BILL "TO AUTHORIZE THE CHEROKEE NATION OF OKLAHOMA TO DESIGN AND CONSTRUCT HYDROELECTRIC POWER FACILITIES AT W.D. MAYO LOCK AND DAM."

October 23, 1985

Mr. Chairman and members of the Committee, I am pleased to be here to present the views of the Department of the Interior on S. 1724, a bill "To authorize the Cherokee Nation of Oklahoma to design and construct hydroelectric facilities at W.D. Mayo Lock and Dam."

The provisions of S. 1724 which relate to the Cherokee Nation of Oklahoma are still under study within the Administration. We defer to the Department of the Army, the Department of Energy, the Department of Justice and the Department of the Treasury as to the provisions which may affect these agencies. We understand that these agencies have technical and policy concerns with the bill as presently drafted and we recommend that these agencies be requested by the Chairman to submit their views. We further understand that the other agency concerns may include the terms of the agreement, the size and terms of the loan and its repayment, the tax foregiveness aspects of section 4; and the effect on certain pending lawsuits concerning rights to hydropower licenses at certain existing dams.

Section 1 of S. 1724 authorizes the Cherokee Nation of Oklahoma to design and construct the addition of hydroelectric generating facilities to the W.D. Mayo Lock and Dam on the Arkansas River near Sallisaw, Oklahoma. This section also provides that the Secretary of the Army, through the Corps of Engineers, the Secretary of Energy acting through the Southwestern Power Administration, and the Cherokee Nation may enter into a binding agreement under which the Nation agrees to (1) design and initiate construction of the generating facilities within three years after the date of agreement; (2) reimburse the Secretary of the Army for costs incurred by the Corps in connection with the project's design or construction; and (3) release the Federal Government from any claims, cause of action, or liability which may arise from such design or construction. The agreement shall also set forth the procedures and requirements for approval and acceptance of such design and construction as well as the rights, responsibilities, and liabilities of each party to the agreement. Finally, the agreement shall set forth the amount of the payments, and the procedures under which certain payments are to be made to the Nation by the Secretary of Energy out of the revenues from the sale of power produced by the generating facilities.

Section 2 of the bill directs the Southwestern Power Administration to market the power produced by the generating facilities. This section specifically authorizes the Secretary of Energy to repay the Cherokee Nation the following: (1) costs incurred for the design and construction from the revenues from the sale of power produced by the generating facilities; and (2) for a period not to exceed 50 years, a reasonable annual royalty for the design and construction of project generating facilities.

Section 3 authorizes appropriations for the operation and maintenance (O&M) of the generating facilities by the Army Corps of Engineers once they receive title to such facilities from the Cherokee Nation, upon completion of the facilities. By contrast, in all Reclamation projects, O&M costs are included as part of the power rates. However, we defer to the Corps of Engineers on section 3.

Finally, section 4 provides that the interest on the Cherokee Nation's obligations used to finance the design and construction under section 1 is exempt from taxation. We defer to the Department of the Treasury on section 4 as well as the question whether section 7871(c) of the Internal Revenue Code of 1954 might already exempt the interest from such obligations from taxation.

It would appear that the authority which would be provided the Cherokee Nation of Oklahoma by enactment of S. 1724 to design and construct the addition of the generating facilities to the W.D. Mayo Lock and Dam near Sallisaw, Oklahoma could have a positive impact on the economy of the Cherokee Nation, its individual members as well as the communities of Sallisaw and Tahlequah, by providing additional employment opportunities. At the same time, there are numerous other concerns with S. 1724 which need to be clarified before the Department of the Interior could support the provisions of this legislation.

This concludes my prepared statement. I would be happy to answer any questions you may have.

Senator **Burdick**. Do either of the other witnesses care to testify at this moment, or are they here for questions?

Ms. **Elbert**. They're here to assist me with questions.

Senator **Burdick**. The Senate Committee on Energy and Natural Resources has recently reported the bill S. 1567, which authorizes the Corps of Engineers to construct this project. In fact, the bill authorizes an appropriation of $119 million for this purpose.

Is this bill compatible with S. 1567, or are the provisions of the two bills in conflict?

Ms. **Elbert**. Mr. Chairman, it's apparently in conflict, but we would defer to the Department of the Army on this particular aspect.

Senator **Burdick**. They're in conflict?

Ms. **Elbert**. It's apparently in conflict. That's my understanding.

Senator **Burdick**. Well, will somebody explain how and why they're in conflict?

Mr. **Reeser**. Mr. Chairman, as I understand it, what the Environment and Public Works Committee bill—S. 1567—would do is authorize the project to be built by the corps. S. 1724 would have the project built by the tribe.

Senator **Burdick**. I see. The bill before us today calls for private financing of design and construction. Would it be correct to conclude that if this bill is enacted, it will result in a savings to the Federal Government of $119 million?

Ms. **Elbert**. It would appear so, but we would have to defer again to the Department of Energy as to the comparative costs to the Federal Government.

Senator **Burdick**. Your statement indicates that once this project is concluded it is turned over to the Corps of Engineers. The operation and maintenance expense will be funded through annual appropriations, whereas in other reclamation projects, operation and maintenance costs are recouped as an added charge to the power rates.

Can you give us an estimate of the probable costs of operation and maintenance annually once this project is put in place?

Ms. **Elbert**. Mr. Chairman, we really don't know an awful lot about this bill. I'm afraid my answer is no, and we would again have to defer to the Department of the Army for this kind of information.

Senator **Burdick**. I see. Well, would you find the answer from somebody and supply that information?

Ms. **Elbert**. We would be glad to do what we can. We would prefer to defer it to the Department of the Army. And I think maybe the tribe would be able to share some light on some of the questions that you are posing to us.

Senator **Burdick**. Well, maybe you can answer this one. Is there any explanation or justification for why the operation and maintenance costs for this project are created differently than other projects? Do you know why that distinction is made?

Ms. **Elbert**. We're not aware of any reason.

Senator **Burdick**. Should I keep on going? I'll try one more. Under this bill, the interest on the Cherokee Nation's bond obligation that's used to finance the design construction will be exempt from taxation. While you defer to the Department of the Treasury on the question of whether section 7871(c) of the Internal Revenue Code may already exempt the interest from taxation, I would like to know if you have reached any informal or formal conclusion of your own.

Ms. **Elbert**. I think we might have an answer for you on that. I would like to defer to Ralph Reeser, however.

Mr. **Reeser**. Mr. Chairman, It's my understanding that the test is whether the bonds are for an essential governmental function. And I also understand that the Jicarilla Tribe has sold some obligations to be—with the proceeds used to purchase a ranch. That was determined to be tax exempt as an essential governmental function.

So, I would think if a ranch is an essential governmental function, then a hydroplant would also be. But that's a Treasury call, not ours.

Senator **Burdick**. There is some difference.

Mr. **Reeser**. Yes, sir, there is.

Senator **Burdick**. It is obvious that the views of other agencies will have to be obtained before the bill could go forward. However, you indicate that your Department has other concerns which need to be clarified before you could support the bill.

Can you give us some idea of what these other concerns are?

Ms. **Elbert**. Yes, sir. Two of the things that come to my mind immediately are the impact on the tribe's interests with regard to amendments that may be proposed to the bill, and then the market for the power and the risks that the tribe would be taking are two things that I can think of right offhand.

Senator **Burdick**. I assume your Department stands ready to work with this committee in developing the necessary technical amendments?

Ms. **Elbert**. Yes, sir. We'd be pleased to do that.

Senator **Burdick**. Well, we'll see you again.

Ms. **Elbert**. Thank you.

Mr. **Taylor** [presiding]. Would you like to go directly into the next two bills, and then we can call the tribal witnesses over?

Ms. **Elbert**. I would like that, Mr. Chairman. If we can take the 99-year leasing, S. 1728, next.

Mr. **Taylor**. Fine. That's the bill to authorize 99-year leases on properties held by the Cherokee Nation?

Ms. **Elbert**. That's correct. Mr. Chairman, we support the enactment of S. 1728. S. 1728 would amend the act of August 9, 1955, to authorize the Cherokee Nation of Oklahoma to lease for 99 years the lands held in trust by the United States. The Cherokee Nation is governed by a tribal constitution which was approved on September 5, 1975, by the Commissioner of Indian Affairs.

Although the Cherokee Nation has existing authority to lease, with the Secretary's approval, its lands for a 25-year period, with an additional 25-year renewal, S. 1728 would grant it the authority to lease its trust lands for up to 99 years. A number of other tribes have similar authority under the provisions of 25 U.S.C. 415. Enactment of S. 1728 would enable the tribe to enter into a lease with the Muskogee City/County Port Authority for a 99-year period. The agreement, in effect, would serve to satisfy a dispute between the Cherokee Nation and the port authority.

A lease between the Cherokee Nation and the Muskogee City/County Port Authority has been approved for a 25-year period, with an option to renew for an additional 25 years. The permit covers approximately 3 acres. On execution of the 99-year lease, the pending litigation between the parties in the U.S. District Court for the Eastern District of Oklahoma, case number 81-318-C, and on appeal to the U.S. Court of Appeals, Tenth Circuit, under No. 83-2325, entitled *Cherokee Nation of Oklahoma* v. *Muskogee City/County Port Authority*, would be dismissed.

This concludes my prepared statement. I'll be glad to answer any questions you may have.

[Ms. Elbert's prepared statement on S. 1728, on behalf of the Department of Interior, follows:]

# STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 1728, A BILL "TO AUTHORIZE THE CHEROKEE NATION OF OKLAHOMA TO LEASE CERTAIN LANDS HELD IN TRUST FOR UP TO NINETY-NINE YEARS."

October 23, 1985

Mr. Chairman, I am pleased to be here to present the views of the Department of the Interior on S. 1728, a bill "To authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to ninety-nine years."

We support the enactment of S. 1728.

S. 1728 would amend the Act of August 9, 1955 (25 U.S.C. 415), to authorize the Cherokee Nation of Oklahoma to lease for ninety-nine years, the lands held in trust by the United States. The Cherokee Nation is governed by a tribal constitution which was approved on September 5, 1975 by the Commissioner of Indian Affairs.

Although the Cherokee Nation has existing authority to lease (with the Secretary's approval) its lands for a 25-year period, with an additional 25-year renewal, S. 1728 would grant it the authority to lease its trust lands for up to ninety-nine years. A number of other tribes have similar authority under the provisions of 25 U.S.C. 415.

Enactment of S. 1728 would enable the Tribe to enter into a lease with the Muskogee City/County Port Authority for a 99-year period. The agreement, in effect, would serve to satisfy a dispute between the Cherokee Nation and the Port Authority.

A lease between the Cherokee Nation and the Muskogee City/County Port Authority has been approved for a 25-year period, with an option to renew for an additional 25 years. The permit covers approximately three acres. On execution of the 99-year lease, the pending litigation between the parties in the United States District Court for the Eastern District of Oklahoma, Case No. 81-318-C, and on appeal to the United States Court of Appeals, Tenth Circuit, under No. 83-2325, entitled Cherokee Nation of Oklahoma v. Muskogee City/County Port Authority, would be dismissed.

This concludes my prepared statement. I will now be happy to answer any questions you might have.

Mr. TAYLOR. Am I correct in understanding that the terms of the lease are $50,000 per year, or is it a $50,000 one shot?

Mr. WISE. It's $50,000 for the first 50 years and then an additional $50,000 for the second 50 years.

Mr. TAYLOR. I see, Perhaps I should save these questions for Mr. Wise. Ms. Elbert, I don't think I have any further questions. We'll explore this other problem with Mr. Wise.

Would you like to go on into the third bill?

Ms. ELBERT. Yes, sir. S. 1684, this is a bill to declare that the United States holds Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma. We would support enactment of S. 1684 if amended as suggested herein.

S. 1684 is based on the presumption that the Secretary holds the Chilocco School property in trust for the Cherokee Nation pursuant to the authority contained in Public Law 93-599, which reads:

> The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group band, or tribe of Indians, within whose reservation such excess real property is located: Provided, that such transfer of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian Tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior and when such real property was held in trust by the United States for an Indian Tribe at the time of acquisition by the United States, or (2), it is contiguous to real property presently held in trust by the United States for an Oklahoma Indian Tribe and was at any time held in trust by the United States for an Indian Tribe.

Because the conveyance has not yet been made, we recommend that the bill be amended to declare that the property be held by the Secretary of the Interior in trust for the named tribes and, further, to authorize the Secretary to partition the property in accordance with the agreement reached between the named tribes on August 30, 1985.

By way of background on the history of the property, in 1882 the Congress authorized the Secretary of the Interior to construct an Indian industrial school near the Pawnee and Ponca Indian Reservations within the Cherokee Outlet. By Executive order in 1884, President Arthur substantially increased the boundaries of the school property. The purpose of the expansion was to allow, "for the settlement of such friendly Indians belonging within the Indian Territory as have been or who may hereafter be educated at Chilocco Industrial School."

Under authority of section 14 of the act of March 2, 1889, an agreement was entered into between the Cherokee Nation and the United States in which the tribe conveyed all of its right, title, and interest in the Cherokee Outlet, consisting of over 8 million acres, to the United States. The agreement was approved by the Cherokee National Council on January 4, 1892, and ratified by the Congress pursuant to section 10 of the act of March 3, 1893.

As a result, the lands formerly known as the Cherokee Outlet, including the Chilocco Reserve, became the property of the United States. However, the Chilocco Reserve was not open to public settlement. Section 10 of the act of March 3, 1893, expressly excepted the Chilocco Reserve from public settlement "until further action of Congress."

In 1980 Congress prohibited the use of appropriated funds to finance academic and residential programs at the Chilocco School, and the conferees on the Department of the Interior and Related Agencies Appropriation Act of 1983 directed the Bureau of Indian Affairs to dispose of the remaining three boarding schools which had been closed, including Chilocco.

We have determined that the property which consists of approximately 5,824 acres, more or less, is subject to the above quoted provisions of 40 USC 483(a)(2), and that the Cherokee Nation is the eligible recipient of the property, since the property is within the former Cherokee Reservation boundary, and that at the time it was acquired by the United States it was held in trust for the Cherokee Nation. While the Cherokee Nation is entitled to the whole of the property, the aforementioned agreement between the Cherokee Nation and the five tribes evidences the Cherokee's desire to share the use and benefit of the property with the five tribes.

In view of the long-standing interest in the property possessed by the Cherokee Nation of Oklahoma and of the contemplated equitable transfer of parts of the property to the other five tribes, it is appropriate for the property to be conveyed to the tribes under the Federal policy embodied in 40 USC 483(a)(2).

While requisite administrative authority exists to transfer the property to the Cherokee Nation, congressional approval is necessary in order for the property to be divided among the six tribes. We, therefore, recommend that S. 1684 be amended to provide the Secretary of the Interior authority to divide and hold the Chilocco school property in trust for the Cherokee Nation of Oklahoma, the Pawnee, Kaw, Otoe-Missouria, Ponca, and Tonkawa Tribes of Oklahoma in line with the terms and conditions of the agreement reached between the said tribes on August 30, 1985.

We also recommend that section 5 be amended to make clear that all rents, royalties, grazing fees, and other income derived from the Chilocco property which have accrued after the date of enactment shall be held in trust for the named tribes. The funds which have accrued prior to the date of enactment are Federal funds and would not be affected.

Finally, in order to avoid clerical errors in the printing, we recommend that the land descriptions be deleted from S. 1684, and instead we recommend that the bill require the legal description be published by the Secretary in the Federal Register. Also, we recommend that the bill merely incorporate by reference the tribal partition agreement of August 30, 1985, in lieu of citing portions of the terms of the agreement in the current bill.

This concludes my prepared statement.

[Ms. Elbert's prepared statement on S. 1684, on behalf of the Department of the Interior, follows:]

# STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 1684, A BILL "TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN CHILOCCO INDIAN SCHOOL LANDS IN TRUST FOR THE KAW, OTOE-MISSOURIA PAWNEE, PONCA, AND TONKAWA INDIAN TRIBES OF OKLAHOMA."

October 23, 1985

Mr. Chairman, I am pleased to appear before the Committee today to present the views of the Department of the Interior on S. 1684, a bill "To declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otce-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma."

We would support enactment of S. 1684 if amended as suggested herein.

S. 1684 is based on the presumption that the Secretary holds the Chilocco school property in trust for the Cherokee Nation pursuant to the authority contained in Public Law 93-599 (40 U.S.C. 483(a)(2)) which reads:

> "(2) The Administrator shall prescribe such procedures as may be necessary in order to transfer without compensation to the Secretary of the Interior excess real property located within the reservation of any group, band, or tribe of Indians which is recognized as eligible for services by the Bureau of Indian Affairs. Such excess real property shall be held in trust by the Secretary for the benefit and use of the group, band, or tribe of Indians, within whose reservation such excess real property is located: Provided, that such transfer of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian Tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of Interior and when such real property was held in trust by the United States for an Indian tribe at the time of acquisition by the United States, or (2) is contiguous to real property presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe."

Because the conveyance has not yet been made, we recommend that the bill be amended to declare that the property be held by the Secretary of the

Interior in trust for the named tribes and further, to authorize the Secretary to partition the property in accordance with the agreement reached between the named tribes on August 30, 1985.

By way of a background on the history of the property; in 1882 the Congress authorized the Secretary of the Interior to construct an Indian industrial school near the Pawnee and Ponca Indian Reservations within the Cherokee Outlet. By Executive Order in 1884, President Arthur substantially increased the boundaries of the school property. The purpose of the expansion was to allow "for the settlement of such friendly Indians belonging within the Indian Territory as have been or who may hereafter be educated at Chilocco Industrial School."

Under authority of section 14 of the Act of March 2, 1889, an agreement was entered into between the Cherokee Nation and the United States in which the Tribe conveyed all of its right, title, and interest in the Cherokee Outlet, consisting of over 8 million acres, to the United States. The agreement was approved by the Cherokee Nation Council on January 4, 1892 and ratified by the Congress pursuant to section 10 of the Act of March 3, 1893. As a result, the lands formerly known as the Cherokee Outlet, including the Chilocco Reserve, became the property of the United States. However, the Chilocco Reserve was not opened to public settlement. Section 10 of the Act of March 3, 1893 expressly excepted the Chilocco Reserve from public settlement "until further action of Congress".

In 1980 Congress prohibited the use of appropriated funds to finance academic and residential programs at the Chilocco School, and the Conferees on the Department of the Interior and Related Agencies Appropriation Act of 1983 directed the Bureau of Indian Affairs to dispose of the remaining three boarding schools which had been closed, including Chilocco (H.Rept. No. 97-978, 97th Congress, 2d Session).

We have determined that the property which consists of approximately 5,824 acres, more or less, is subject to the above quoted provisions of 40 U.S.C. 483 (a)(2)) and that the Cherokee Nation is the eligible recipient of the property, since the property is within the former Cherokee Reservation boundary and that at the time it was acquired by the United States, it was held in trust for the Cherokee Nation. While the Cherokee Nation is entitled to the whole of the property, the aforementioned agreement between the Cherokee Nation and the five tribes evidences the Cherokee's desire to share the use and benefit of the property with the five tribes.

In view of the long-standing interest in the property possessed by the Cherokee Nation of Oklahoma and of the contemplated equitable transfer of parts of the property to the other five tribes, it is appropriate for the property to be conveyed to the tribes under the Federal policy embodied in 40 U.S.C. 483(a)(2).

While requisite administrative authority exists to transfer the property to the Cherokee Nation, Congressional approval is necessary in order for the property to be divided among the six tribes. We, therefore, recommend that S. 1684 be amended to provide the Secretary of the Interior authority to divide and hold the Chilocco School property in trust for the Cherokee Nation of Oklahoma, the Pawnee, Kaw, Otoe-Missouria, Ponca, and Tonkawa Tribes of Oklahoma in line with the terms and conditions of the agreement reached between the said tribes on August 30, 1985. We also recommend that Section 5 be amended to make clear that all rents, royalties, grazing fees, and other income derived from the Chilocco property which have accrued after the date of enactment shall be held in trust for the named tribes. The funds which have accrued prior to the date of enactment are Federal funds and would not be affected.

Finally, in order to avoid clerical errors in the printing, we recommend that the land descriptions be deleted from S. 1684 and instead we recommend that the bill require the legal description be published by the Secretary in the Federal Register. Also, we recommend that the bill merely incorporate by reference the tribal partition agreement of August 30, 1985, in lieu of citing portions of the terms of the agreement in the current bill.

This concludes my prepared statement. I would now be happy to answer any questions the Committee may have.

Mr. TAYLOR. I don't have any questions. I think Mike Mahsetky, the staff attorney with the committee, has some questions.

Mr. MAHSETKY. What agency or department currently has custody of Chilocco Reserve?

Ms. ELBERT. The Bureau of Indian Affairs, the Department of the Interior.

Mr. MAHSETKY. What is the relationship with GSA and the Bureau relative to this land?

Ms. ELBERT. I'd like to defer to Mike Cox, who's from our Solicitor's Office.

Mr. COX. If we were to transfer this property administratively, the Bureau of Indian Affairs would report the property as excess to the General Services Administration. The property would then be transferred to GSA and the provisions of Public Law 599 would go into effect.

We would be explaining to GSA that in our view the Cherokee Nation meets the qualifications of Public Law 599, and therefore the property should be transferred back to the Secretary of the Interior to be held in trust for the Cherokee Nation.

Mr. MAHSETKY. Would this amendment clarify the role of GSA in the transfer back to the Bureau?

Mr. COX. What we are doing is in effect bypassing the administrative disposal statutes and regulations by authorizing an outright transfer to all the tribes. But since legislation is needed in order to approve this gift conveyance, basically from the Cherokee Nation to the other five tribes, the feeling was we might as well just go ahead and authorize the transfer by Congress rather than going through the administrative steps of transferring the property to GSA and then back to Interior again.

Mr. MAHSETKY. Without the recommended amendment, how long would it take for the conveyance to be made initially to the Cherokee Nation?

Mr. COX. Without the legislation?

Mr. MAHSETKY. Yes.

Mr. COX. It's hard to predict. It could be a matter of weeks to do it. It could take longer though.

Mr. MAHSETKY. Once the conveyance occurs the way the law is currently—or the bill is currently drafted—could not the Cherokee Nation legally transfer, then at that point transfer the portions of the land to the five tribes?

Mr. Cox. Under the current draft?

Mr. **Mahsetky**. Yes.

Mr. Cox. Yes; if the property were transferred administratively. And then, as I view the current draft of the bill, the Cherokee Nation is authorized to make the transfer to the five tribes. Yes, it could occur that way.

Mr. **Mahsetky**. Have the relevant tribes been apprised of the proposed amendment, and if so, are they in agreement with it?

Ms. **Elbert**. To my knowledge they are.

Mr. **Mahsetky**. One last question. How much annual income does the Chilocco Reserve generate approximately from leasing and mineral royalties, et cetera?

Ms. **Elbert**. I don't believe we have that information.

Mr. **Mahsetky**. If you could provide it to the committee.

Ms. **Elbert**. Yes, we could.

Mr. **Mahsetky**. Thank you. That's all the questions I have.

Ms. **Elbert**. Thank you.

[In response to the above question of Mr. Mahsetky, the following letter, dated November 25, 1985, was received from Ralph R. Reeser, Director, Congressional and Legislative Affairs Staff, Bureau of Indian Affairs, U.S. Department of the Interior:]

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

November 25, 1985

Honorable Mark Andrews
Chairman, Select Committee
  on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On October 23 before your Committee we were asked to provide additional information regarding S. 1684, a bill "To declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma."

Specifically, we were asked "How much annual income does the Chilocco Reserve generate, approximately, from leasing and mineral royalties, et cetera?" The information received from our Anadarko Area Office indicates that in 1984 a total of $172,214.03 was received in income from the Chilocco Reserve, with a projected income figure of $200,016.60 for 1985.

We hope this information is helpful. If we can be of further assistance, please advise.

Sincerely,

Ralph R Reeser
Director, Congressional and
  Legislative Affairs Staff

Mr. TAYLOR. Our next panel of witnesses will be Lawrence Wise, the executive director of the Cherokee Nation of Oklahoma. And, Mr. Wise, I don't know who may be accompanying you, but——

Mr. WISE. Mr. Joe Moody, Jr., of the Benham Group, Benham Holway Power Group, and Harold Aronson of the Council of Energy Resource Tribes.

Mr. TAYLOR. I guess you're here to testify on three bills, so why don't we start with S. 1724?

Mr. WISE. Thank you, Mr. Chairman.

## STATEMENT OF LAWRENCE WISE, EXECUTIVE DIRECTOR, CHEROKEE NATION OF OKLAHOMA, ACCOMPANIED BY JOE R. MOODY, JR., EXECUTIVE VICE PRESIDENT, CHIEF OPERATING OFFICER, THE BENHAM GROUP, BENHAM HOLWAY POWER GROUP; AND H. HAROLD ARONSON, PROJECT MANAGER, COUNCIL OF ENERGY RESOURCE TRIBES

Mr. WISE. Mr. Chairman, members of the committee, we thank you for allowing us to appear here to ask your support of S. 1724. We have submitted written testimony, and therefore, I will review in summary what we have submitted.

Under the leadership of our principal chief, Ross O. Swimmer, for the past 10 years, the Cherokee Nation has developed a strategy to maintain self-determination through economic development. This self-determination through economic development means not only self-determination for the Nation, but self-determination for the individual by placing them in an economic status that will cause an improvement in their standard of living and move them forward into society of eastern Oklahoma.

The bill that is before you, and our proposal to build a hydroelectric project, will further this project. In fact, the maximum royalties over a period of the first 25 years will amount to between $100,000 and $300,000 a year, and accrue to the tribe for economic and social development purposes. The second 25-year royalties, between $1 million and $3 million per year, would accrue to the tribe for continued economic development and reduce the reliance on Federal funds.

I think it is important to point out that we have made significant contacts with the cognizant Federal agencies: the Corps of Engineers, the Department of Energy, and the Federal Energy Regulatory Commission. We have had several meetings with the corps—Tulsa and Dallas—with the Southwestern Power Administration, with Assistant Secretary of the Army Robert Dawson and Acting Assistant Secretary of Energy Donna Fitzpatrick, and have their concurrence where they've worked on the legislation. They've helped us greatly and we wish to acknowledge their help. And, in fact, this Monday at 1 p.m. we met with the Commanding General of the Corps of Engineers at Dallas, Major General Hilmes, and briefed him on this project.

I would like to submit and have inserted into the record, the correspondence between the various agencies and ourselves showing that there is support for this project.

Mr. TAYLOR. We'll make it a part of the record at this point.

[Correspondence referred to by Mr. Wise follows:]

Department of Energy
Washington, D.C. 20585

SWPA OFFICIAL COPY

From/Date: RY 7-19-85 Digest
Assigned to: [illegible]

| | | |
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| W | 7/19 | 100 |
| | 7/12 | 101 |
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JUN 14 1985

Dear Mr. Swimmer:

I appreciated learning of your interest and plans for the development of a hydroelectric project on the Arkansas River at the W. D. Mayo Lock and Dam, as presented during the meeting in Assistant Secretary Robert K. Dawson's office on May 22, 1985.

I understand your plan is to design and construct the W. D. Mayo generation facility utilizing private investment. The Corps of Engineers would approve the design, inspect the construction, and own, operate, and maintain the project. The Southwestern Power Administration would market the power from the project, which would produce revenues to repay all costs and provide royalties to the Cherokee Nation.

This type of non-Federal initiative will relieve the Federal budget of the large construction cost and still achieve the full development of the renewable energy source. I encourage you to proceed and am pleased the Southwestern Power Administration has been able to contribute to the planning effort.

Yours truly,

Donna R. Fitzpatrick

Donna R. Fitzpatrick
Acting Assistant Secretary
Conservation and Renewable Energy

Mr. Ross Swimmer, Principal Chief
Cherokee Nation of Oklahoma
Tribal Complex
P. O. Box 948
Tahlequah, Oklahoma 74465

cc:
Mr. R. H. Wilkerson, Administrator
Southwestern Power Administration

Honorable Robert K. Dawson
Assistant Secretary of the Army,
Civil Works

CHEROKEE NATION

P.O. Box 948 • Tahlequah, Okla. 74465 • (918) 456-0671

Ross O. Swimmer
Principal Chief

Wilma P. Mankiller
Deputy Chief

May 29, 1985

Mr. Robert K. Dawson
Assistant Secretary of the Army (Civil Works)
Department of the Army
Office of the Assistant Secretary
Pentagon-Room 2E570
Washington, DC 20310

Dear Mr. Secretary:

On behalf of the Cherokee Nation, I want to thank you and your staff for meeting with us this past week. That visit was most informative and helpful in our efforts toward development of a hydroelectric generation facility at the W. D. Mayo Lock and Dam 14.

The session strengthened my convictions that our proposal for non-federal development maximizes the Administration's goals by coupling Corps of Engineers operation, maintenance and ownership with power marketing by Southwestern Power Administration and utilizes the existing infrastructure and manpower. This will facilitate the best, most efficient use of the nation's water resources, brought about by a combination of non-federal funding along with the necessary federal participation. This project is important to the Cherokee Nation in that it will provide much needed jobs, will allow the Cherokee to be more independent of federal assistance programs, and furnish educational facilities for tribal members.

I have requested Mr. Harold Aronson to give top priority to providing your staff with information necessary to answer any questions regarding the Cherokee Nation's position and approach. A clear understanding is needed in order to avoid any misperceptions that our project does not coincide with the Corps' guidelines of the best federal/non-federal application for hydroelectric power on the Arkansas River.

This project's only real chance at success is the appropriate mix of non-federal (Cherokee Nation funding/development) and federal (Corps of Engineer ownership including operation and maintenance, and Southwestern Power Administration marketing and wheeling the power) participation. To emphasize this, I have attached a brief of my presentation to you outlining what I feel is the most reasonable, realistic and workable case for this federal/non-federal mix.

I am hoping we can reach an early agreement on legislative language so I may brief the Oklahoma Congressional Delegation during some meetings they have scheduled for other purposes in the first week of June. In order to obtain the stand-alone legislation we seek, their early and full cooperation is needed.

I would like to reiterate my pleasure in the assistance afforded the project by the Corps' Tulsa and Dallas personnel. They have been most helpful and innovative, and are largely responsible for the formulation of a realistic approach that will allow us to act as the non-federal developer in a reasonable time frame.

Again, thank you for a most beneficial meeting. I look forward to being able to join together soon in a mutually rewarding effort.

Very truly yours,

Ross O. Swimmer
Principal Chief
Cherokee Nation of Oklahoma

cc: Donna Fitzpatrick
Department of Energy
bcc: Ronald Wilkerson, SWPA
Mike McDowell, Southwestern Power Resources Assoc.

## CHEROKEE NATION OF OKLAHOMA PRESENTATION TO ROBERT K. DAWSON, ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)
### WASHINGTON, DC - MAY 28, 1985

The Cherokee Nation of Oklahoma has successfully built up an industrial base by originating and operating profitable businesses in the private sector:

(1) Electronic assembly plant supplying the U.S. defense industry with revenues of $11 million.

(2) Horticulture and nursery operation with revenues of $800,000.

(3) Ranch, poultry and cattle management operation with revenues of $450,000.

We are striving to broaden our business base in a depressed geographical area and somewhat depressed economy. It is for these reasons that the development of hydroelectric power on the Arkansas River makes sense as a Cherokee development.

The Cherokee Nation is prepared to bring 100% of the financing to the table to facilitate developing a Hydroelectric Power Generation Facility at W. D. Mayo Lock and Dam 14 on the Arkansas River. We feel that this is in keeping with the intent of President Reagan's letter of January 24, 1984, to Senator Paul Laxalt, in which he stated, in part:

> "The water project financing and cost sharing policy of this administration is:
>
> - All federal water development agencies will continue to seek out new partnership arrangements with the States and other non-federal interests in financing and cost sharing of all proposed projects. Each agency will negotiate reasonable financing arrangements for every project within its respective area of responsibility."

Based on the premise that 100% project funding is provided, the following major factors needs to be highlighted:

- Given the existing situation on the Arkansas River, with the Corps' ownership and operation of all the locks, dams, and hydroelectric generation facilities within a reasonable distance up and down the river from W. D. Mayo, including Corps' lock and dam operation at Mayo, it appears that the public's interests would be best served by the Corps' operation of a hydroelectric facility at Mayo. This would then bring about the following:
    - The most efficient management and operation of this water resource.
    - Utilizing the existing infrastructure, which would among other items, negate the need to hire and train additional personnel, or construct new power lines.
    - Allow for maximum capability with the existing system.

- The ability to apply maximum control and coordination of:

    *Upstream flood control releases.
    *Upstream level maintenance during low flow periods.
    *Travel time releases both up and downstream.
    *Sediment movement
    *Routine operational activities.
    *Close coordination between other powerhouses.

- With the Corps' ownership, combined with their facility operation and maintenance, the Southwestern Power Administration is then able to market the power to its Preference customers, who will need the additional peaking capacity. This approach is within the existing guidelines of both organizations, and sets no new precedents for the future.

- Therefore, by obtaining legislation to authorize this project, a FERC license would not be required, which would allow the project to be developed and furnishing on line power by 1990, at least 3 years earlier than could be accomplished otherwise. And based on present projections, the demand is there, and the timing most realistic.

In summary, this approach to the operational and marketing aspects of the project by the existing federal infrastructure, without the expense of having to add extra personnel or facilities, makes such an attractive alternative of a federal/non-federal project, it makes its own case for avoiding the FERC route.

We have held many discussions with the Southwestern Power Administration regarding the cost of power to its customers, and how those costs would be affected by inclusion of W.D. Mayo in its grid. Based on the latest cost estimates for the project as derived within the past nine months by the Grand River Dam Authority, it appears that the mill rate for power from the facility, when melted into the entire system is well within their guidelines, and ability to market to their system. The acceptance of this approach has been voiced by a majority of SWPA's preference customers, in the form of the Southwestern Power Resources Association.

As was stated, it is the Cherokee Nation's intent to provide the financing and development of the project in return for a reasonable royalty, which was included in all our discussions with SWPA and in their initial rate computations. We are anxious for the project to proceed as soon as practical for the following reasons:

- It will provide, in the near term, much needed jobs in Northeastern Oklahoma.

- It will provide schools and other activities and facilities that will improve the overall Tribal circumstances.

- It will help enhance the possibility of Tribal independence from federal subsidy programs.

Over the past year, the Cherokee Nation has reviewed all the feasibility work performed in regard to a Hydroelectric Power Generation Facility at W. D. Mayo Lock and Dam 14, plus conducting a thorough search for an industrial partner to assist in the development of the project. After detailed selection process, conducted so as to conform to sound procurement practices, Southwestern Hydro Associates (SHA), a joint venture of the Benham-Holway Power Group and Manhattan Construction, was chosen. In turn, SHA has retained financial counsel from Smith Barney. This final selection was based on the fact that the joint venture partners have extensive design and construction background in low head hydroelectric projects, and specifically, experience on the Arkansas River.

In addition, SHA is local to the Northeastern Oklahoma area, and have had considerable interaction with the Tulsa, Little Rock and Dallas Corps' offices. SHA also has been consultants to the Grand River Dam Authority continuously for over 50 years. Finally, having a local firm is to the Nation's advantage, in order to obtain better coordination and communication between partners.

It is the responsibility of SHA to develop an updated feasibility study on the project, followed by a firm facility construction estimate, which is being fully coordinated with the Corps of Engineers, and in consideration of maximum NED benefits. This will then allow us to seek the best financial arrangements available to provide the 100% project funding, including the monies required by the Corps for their design approval and construction oversight activities. SHA is in the process of finalizing their estimates, which will be completed within the next two months. Meanwhile, the Cherokee Nation and SHA are conducting preliminary investigations into all possible methods and sources of financing, and have generated considerable positive results. It should be pointed out that all contacts have indicated the absolute necessity of providing a firm, bondable construction cost estimate as a prerequisite for obtaining that financing.

In our meeting, Mr. Shwaiko outlined those three approaches to this project as he saw them.

- Full federal financing of the project which would involve Congressional authorization and appropriations, in which the Corps would carry out all activities from design and construction to OM&R, and would own the facility. SWPA would market and wheel the power. (Since this has not been accomplished within Congress for a long time and it doesn't fit within the Administration's guidelines, this approach has little chance in succeeding in the near future.)

- Full non-federal funding, development, ownership and OM&R which would involve the non-federal source either utilizing the power generated itself, or marketing it on its own grid. (This would fit within the Administration's guidelines, but, as has been pointed out above, this location would not realistically be maximizing the water and power resources of the area.)

- Mix of federal/non-federal participation which would vary according to circumstances. Certainly, non-federal financing would be involved, plus as much other non-federal activity as made sense, but still allowed an efficient overall combined facilities operation.

The Cherokee Nation feels that their approach fits nicely into the third category in a manner which maximizes both federal and non-federal participation and amounts to a WIN-WIN siutation and are vigorously pursuing our goals.

Based on this most productive meeting, I am hoping to have mutually agreeable legislative language drafted in time for me to meet with the entire Oklahoma Congressional Delegation during the first week in June, to outline our approach and marshall their combined support. I have talked with each of them individually, with very positive results and with the promise of bringing everyone together in order to get the legislation prior to the Congressional recess this summer.

Further, by achieving legislation this summer, we could proceed to negotiation of a three way contract between the Corps, SWPA and Cherokee Nation, looking for that to be concluded by year end. Concurrently, with a firm construction cost estimate in hand, obtain project financing, which would allow for the final design to begin in January, 1986.

Final financing will be in place by the end of 1986, along with completed and Corps' approved design. Construction could commence in early 1987, and be completed in late 1989, with the system checkout accomplished in time for on line power to be produced in early 1990.

SWTPL 23 May 1985

MEMORANDUM FOR RECORD

SUBJECT: W.D. Mayo Lock and Dam 14, Oklahoma, Hydropower Proposal - Meeting Between Cherokee Nation of Oklahoma; Assistant Secretary for Conservation and Renewable Energy, DOE; and Assistant Secretary of the Army (Civil Works)

1. The subject meeting was hosted by Mr. Robert Dawson, Assistant Secretary of the Army (Civil Works). It was held in his conference room at 1300, 22 May 1985. The roster of meeting attendees is shown at the attachment.

2. Mr. Dawson welcomed the meeting participants and invited representatives of the Cherokee Nation to open discussions about their proposal. Principal Chief, Ross Swimmer, Cherokee Nation (Nation), presented an overview summarized as follows.

a. He had been appointed by President Reagan as Co-Chairman of a presidential commission on Indian Economic Development.

b. The proposal is a result of that involvement.

c. The investment conforms to the current Administration's goal of non-Federal investment/development in lieu of traditional Federal development.

d. The project would result in economic growth to the Nation and would benefit that economically depressed area.

e. The proposal has received positive verbal endorsement from representatives of the Oklahoma congressional delegation.

f. The Nation has committed resources to review the CE survey report. Representatives of the Nation have concluded that the proposed development would be economically and financially attractive as a long term investment.

3. Mr. Hal Aronson then described specific details regarding the proposed partnership arrangement.

a. Eighteen large A-E firms submitted design and construction proposals to the Nation in response to their advertisement. The Benham-Holway Powergroup/Manhattan Construction Company was selected because of their established capabilities in performing similar work on the Arkansas River and because they are locally situated. Both the Corps of Engineers and the Southwestern Power Administration have been identified as viable partners because it is impractical for the Nation to own, operate, and market the power facilities they desire to finance.

b. The following implementation schedule was reported:

(1) Obtain congressional authorization - September 1985.

(2) Award contracts for A-E design and construction by the end of calendar year 1985.

(3) Initiate construction during 1987 and generate power by 1990.

4. Following the aforementioned presentations, the following discussion was noted.

a. Dr. Deason questioned the rationale for the involvement of the CE and SWPA as Federal partners.

b. Chief Swimmer responded that the alternative of the Nation to "go it alone" had been fully explored. He stated that the Nation could implement such a plan: however, he believed that:

(1) The Federal infrastructure for marketing the power within the existing system was in place. The Nation would have to establish/duplicate that infrastructure as a basis to "go it alone", and that option would not be the most prudent use of both Federal/non-Federal resources. Further, maximum net benefits could be ensured with synchronized power generation in a compatible manner with other existing Federal hydropower facilities along the navigation system.

c. Mr. Shwaiko summarized three options for development:

(1) Traditional all Federal development.

(2) Non-Federal development via the FERC process.

(3) A combination of the above involving both non-Federal and Federal partners.

He related that if the group is to pursue the combination option, a convincing rationale must be made to the Administration and the Congress why the proposal has superior merit over other options.

d. Mr. Bowers discussed in general the need for additional power by year 1989 in Oklahoma and by the early 1990's in the Southwest Power Pool. He expressed the support of the Southwestern Power Administration for the Nation's proposal as one in which the non-Federal financing objective and maximum utilization of renewable resources would be achieved.

e. Mr. Dawson questioned the approach favored by the Nation for obtaining the required legislative approval to construct the proposed facilities.

Chief Swimmer responded that he favored special legislation and did not desire that the legislation become a part of a national omnibus bill that may require much greater time to become law.

f. Mr. McDowell stated that the power entities he represents would oppose an option that did not provide for the Corps of Engineers to own and operate the facilities at W.D. Mayo.

g. Ms. Fitzpatrick opined that the Nation's proposal appears generally consistent with the views of the current Administration. Further, similar innovative plans for non-Federal financing could potentially be developed at other sites.

5. In concluding the meeting, Mr. Dawson stated that he would formally respond to Chief Swimmer about the proposal as presented. The meeting adjourned at 1345.

Robert D. Brown
ROBERT D. BROWN
Chief, Planning Division

Attachment

CF:
SWPA (Bowers)
DAEN-CWR-R (Combs)
Hal Aronson, Counsel of Energy Resources
Mike McDowell, SPRA

# MEETING WITH THE U.S. ARMY CORP OF ENGINEERS
Southwestern Division

on

W.D. MAYO LOCK AND DAM 14

attended by

SOUTHWESTERN POWER ADMINISTRATION
SOUTHWESTERN POWER RESOURCES ASSOCIATION
CHEROKEE NATION OF OKLAHOMA

1114 Commerce Street, Room 407
Dallas, Texas 75242-0216

10:00 A.M.

1. Introduction of all Participants
2. Outline Cherokee Proposed Approach

   Progress to Date
   Planned Future Activity
3. Comments by Regional Engineer
4. General Discussion

   What Else Needs to be Done
   Who Needs to Take Action
   Plan For Continuing Communication

SWDPL-MS 13 May 1985

MEMORANDUM FOR RECORD

SUBJECT: Cherokee Indian Nation of Oklahoma (NATION) Sponsorship of W.D.Mayo Lock and Dam Generating Facilities

1. A meeting was held at 10 am on 19 April 85 in the Southwestern Division office to discuss sponsorship by the NATION of hydroelectric power generating facilities at W.D.Mayo Lock and Dam. The meeting participants included the SWD, CIN, Southwestern Power Administration(SWPA), and Southwestern Power Resources Association(SWPRA). A list of attendees is attached.

2. The meeting was requested by the NATION to present information concerning a proposal to finance the design and construction of hydroelectric power generating facilities at W.D.Mayo Lock and Dam by private enterprise. The proposal presently includes Corps of Engineers participation in design approval,supervision during construction, operation,maintenance, major replacement activities, and Federal ownership. The proposal also includes marketing of the plant output by the SWPA. All costs associated with design and construction would be provided by the NATION and all costs associated with operation, maintence, major replacement, and contract administration by SWPA would be reimbursed from power sales revenue through preference customers.

3. In the opening remarks Principal Chief Ross Swimmer made the following points regarding their interest in development of the generating facilities at W.D.Mayo.

a. The facilities would be on or immediately adjacent to tribal lands.

b. It represents and attractive normal business venture for the NATION at a time when interest rates seem to be coming down.

c. It is an investment which is in line with the Administration's goal of increased privitization.

d. It would result in an economic input to benefit the economically distressed members of the NATION.

He further indicated that the venture had recieved a strong positive response from all members of the Oklahoma congressional delegation. The Bureau of Indian Affairs (BIA) have been involved in the proposal. Interagency funding is being provided for studies under the FERC preliminary permit process. While they are moving through the FERC proceedure, they prefer to be involved with the CE because of their overall knowledge of hydropower design, major waterway operating experience, coorelation of system operations and SWPA's ability to market and intertie with other systems to assure load dependability. These factors are key to the successful marketing of the proposal within the investment banking community.

4. Mr. Aronson then described the background activities which led to Chief Swimmer's statements of preference.

a. They had reviewed the CE report on W.D.Mayo and it looked attractive.

b. They contracted 18 firms concerning interest in making proposals. Of these, 7 major companies both domestic and forign made specific proposals for design and construction. BIA was involved in this process.

c. The Benham-Holway Power Group/Manhattan Construction Co. proposal was selected for several reasons but primarily because of their knowledge of Corps design criteria and proceedures and proximity to the NATION.

d. None of the proposals provided the flexibility and experience for continuity in operation and marketing as did the CE/SWPA combination.

5. The following activity schedule was suggested by Mr. Aronson.

a. Congressional authorization for CE and SWPA by August or September 1985.

b. Develop a negotiation strategy and a negotiated contract(s) with the NATION, CE, and SWPA for all activities by Jan 86.

c. Initiate and complete design during 1986.

d. Initiate construction in 87 with an anticipated power on line date in 1990.

The project proposed would consist of 3-12.5 mw bulb turbines. They would be willing to increase the installation to the NED project subject to marketability requirements. They also expressed and immediate desire to exchange technical information on the project.

6. The open discussion produced the following questions and answers.

a. Q. How does the NATION plan to involve the public in the decision making process?

A. This will be accomplished through the FERC preliminary planning permit process.

b. Q. Is the feasibility of the NATION proposal dependent on the correlation of the operation and marketing of the upstream Robert S. Kerr project?

A. Yes. Both of these facilities are to be peaking plants and therefor must be closely correlated to capture the powerwave movement as well as the same load demand.

c. Q. How do the NATION plan to get the generating facilities authorized?

A. An independent bill which is non-contraversial will be presented by P.C. Swimmer to the Oklahoma delegation for processing through the necessary congressional committees.

d. Q. Would there be a major problem if all non-Federal moneys were administered by the Corps for design and construction?

A. Yes. This adds an additional administrative layer and would result in an increase in cost. However, there are certain areas which the Corps could provide and expedite the overall effort. The areas suggested were: environmental analysis, model studies, cost estimates for OM&R, design approval, work activity sequencing, and real estate appraisal and acquisition.

e. Q. How will BIA be kept involved?

A. The NATION will be responsible for keeping BIA informed and involved as necessary.

f. Q. Is this proposal consistant and compatable with the development-proposal offered by the SWPRA to the CE?

A. Yes. While this is in advance of our over proposal, it provides a good additional test of the non-Federal financing challange.

7. The following "next step" actions were agreed to:

a. Finalize draft legislation for use by Principal Chief Swimmer by 1-2 May 85.

b. Arrange for meetings with MG Wall, Chief, Civil Works and Mr. Dawson, Acting Asst. Sec. of the Army(CW) during the 15 May time frame for P.C. Swimmer.

c. Upon concurrence by the foregoing and following congressional authorization in August or September, initiate the development of negotiating strategy and then negotiate an agreement(s) with the CIN, CE, and SWPA. Action to be completed by Jan 86.

d. Initiate and complete design in 1986.

e. Complete firm cost estimate and develop public offering for design and project financing in 86 and in the first half of 87.

f. Initiate construction in 1987 with a power-on-line date in 1990.

Gene N. Washburn, P.E.
SWDPL-MS

CHEROKEE NATION/ SPA / CORPS MEETING
APRIL 19, 1985

ATTENDANCE LIST

| NAME | FIRM | PHONE |
|---|---|---|
| BILL SMITH | BENHAM-HOLWAY POWER GROUP-TULSA | 918-492-1600 |
| Joe Moody | Benham- Holway Power Group-Tulsa | 918-492-1600 |
| Bill Altom | Manhattan Const. Co. | 918-583-6900 |
| Tommy Thompson | Cherokee Nation of Oklahoma | 918- 456- 0671 |
| Larry Wise | " " " " | " " " |
| H. Harold Aronson | Council of Energy Resource Tribes | 303- 794- 7936 |
| [illegible] | Cherokee Nation | 918-456-0671 |
| Ron Wilkerson | SWPA | 918-581-7474 |
| Walter M. Bowers | SWPA | 918-581-7476 |
| Barry G. Rought | SWDPL | 214-767-2301 |
| Bob Brown | SWTPL | 918-581-7314 |
| Gene N. [illegible] | SWDPL | 214-767-2309 |
| Samuel N. Aiken | SWDED | 214-767-2351 |
| George W. [illegible] | SWDOC | 214 767 2564 |
| MIKE COTTRELL | SWDRE | 214 767-2344 |
| Jim Hill | SWTPL-A | (918) 581-7821 |
| BG ROBERT J DACEY | COMMANDER, SWD, USACE | (214) 767-2500 |
| COL LEROY D HAMMOND | DEPUTY COMMANDER, SWD, USACE | (214) 767-2500 |
| Francis Gajan | Director, Power Marketing | 918-581-7529<br>FTS - 745-7529 |
| Mike McDowell | S.W. POWER RESOURCES ASS'N | 405-340-1900 |

SWDPL-MS 8 MAY 1985

MEMORANDUM FOR RECORD

SUBJECT: Federal/Cherokee Indian Nation of Oklahoma (NATION) Development of Hydropower at W.D.Mayo Lock and Dam

1. A two day conference was held in SWDO on 1-2 May 85 to discuss the merits of Federal participation in and with the NATION. The first part of the conference involved inhouse discussions concerning the need for Federal involvement, issues associated with entering into agreements with the NATION, and a strategy for discussions at a conference on the second day with the NATION. Exploratory discussions were held on the second day with representatives of the NATION, SWPA , and SWPRA to determine the basis for their need for Federal involvement, timing of requested legislative support, and background information for providing drafting service for legislative language the NATION had requested. A list of attendees for the meetings is attached.

2. The following points were made supporting Federal involvement in the development at W.D.Mayo:

a. The feasibility of hydropower development is directly dependent on releases from the upstream Robert S. Kerr project. Since there is no specific storage in the W.D. Mayo project to allow for an alternate power production sequence the two projects become hydraulically intertied and thus institutionally intertied. The latter is additionally confirmed because it would be uncommon that a non-Federal electrical demand system would be sycronized with the Federal system.

b. Since the two projects are tied hydraulically and institutionally it seems logical that the maximum net benefits to the nation could not occur with non-Federal development and would only occur through Congressional authorization.

c. Further, the downstream tandem development represents an attempt by non-Federal interest to achieve financial viability by trying to compete for the same source of energy. Previous non-Federal efforts have resulted in non feasibility for three previous FERC applicants.

d. The technical engineering expertise of the Corps in regard to physical model development,turbine design, construction supervision, system analysis, and operation and maintenance are highly sought by the A-E consulting and investment banking communities.

3. The following concerns were raised about entering into an agreement with NATION following their design and construction of hydropower facilities at W.D. Mayo:

a. Land ownership where the powerhouse would be located is in question. The resolution of this question will be the responsibility of the NATION.

b. Liability for the design and construction would be a matter that would be addressed in the preparation of draft legislation.

c. Timing of the need for legislative authority of the Corps to operate and maintain was a key issue for clarification with the NATION. Any services suggested at this time by the NATION which would be required of the Corps during design and construction could be accomplished through our authority under the Intergovernmental Cooperation Act.

d. The design criteria would be Federal (Corps) since the product would be owned and operated by the Corps.

e. The draft legislation needs to preserve the Federal responsibility in the event NATION is unable to perform financially the design and construction.

f. Federal involvement in providing the requested approval of design and construction is essential for reducing the risk of the investment for the investment banking community. This is a further documentation of the need for Federal involvement in the project.

4. During the discussions with the NATION the following pertinent points were concluded:

a. The NATION needs to get Congressional authorization of the facilities for the Corps prior to the end of 1985 and preferably prior to the end of FY 85 so that a good and firm financing package can be presented to their investment banker(Smith-Barney).

b. Presentation of the draft legislation must be based primarily on the need for economic development of the NATION and written in a fashion that the Public Works Committees are use to reviewing.

c. The NATION strongly supports authorization for the Corps with special authorization for the NATION to design and construct.

d. The NATION concurs in the acceptance of liability for design and construction.

e. A meeting will be setup for the week of 21 May for Chief Swimmer to discuss the NATION's proposal for W.D. MAYO with Mr. Dawson.

Gene N. Washburn,P.E.
SWDPL-MS

Non-Fed Financing - Hydropower
1-May 85

| | |
|---|---|
| Gene N. Washburn | SWDPL-MS |
| Mike Mocek | SWFPL |
| Vernon Johnson | SWDRE-P |
| John Hill | SWTPL-A |
| Tom Brown | SWT PL |
| Eugene W. Sikes | SWDPL-MP |
| Harold Green | SWDPL-R |
| Glen Combs | DAEN-CWR-P. |
| Ron DeBruin (part time) | SWD PL-MS |
| William P Johnson Jr | SWDED-TC |
| David R. Brown | SWDES - WA |
| John W. Gillmore | SWDCO-C |
| Anne Keever Cannon | SWDPA |
| George Johnson (part-time) | SWDCO-O |
| Ken Cooper | SWDPL-E |
| Bob King | OCE CWR-R |
| Bill Holliday | OCE CWP-C |
| Alex Shwaiko | OCE- CWR |
| Barry E. Knight | SWD PL |
| Bill Pearson | SWDPL |
| Thomas H Moore | SWDOC |
| John A. Brigance | SWDPS |
| David L. Burrough | SWLED-P |

W.D. Mayo
2-May 85

| Name | Organization | Phone Number |
|---|---|---|
| • Mike McDowell | S.W. Power Res Ass'n | 405-347-1900 |
| Hal Aronson | Council of Energy Resource Tribes | 303-794-7936 |
| Lynn Wise | Cherokee Nation | 918-456-0611 |
| Bill Pearson | SWD PL | 214-767-2312 |
| Ed Wilson | SWPA | 918-581-7523 |
| Wayne M. Bowers | SWPA | 918-581-7476 |
| Alex Shwaiko | OCE. CWR | 202-272-0116 |
| Bob Kaighn | OCE- CWR | 202-272-0123 |
| GLEN COMBS | OCE-CWR | 202-272-0123 |
| John Hill | SWTPL-A | (918) 581-7821 |
| Hector Vela | Division Counsel, SWD | 214 767-2569 |
| William P Johnson | SWD, Engr Div | 214-767-2372 |
| Gene N. Washburn | SWD, Planning Div | 214 767 2309 |
| • [illegible] | [illegible] | 713-445-1500 |

6/18/85

Choctaw Nation of Oklahoma
Drawer 1210 • Durant, Okla. 74702-1210 • (405) 924-8280

**Hollis E. Roberts**
Chief

**Gregory E. Pyle**
Assistant Chief

June 17, 1985

Chief Ross Swimmer
Cherokee Nation
P.O. Box 119
Tahlequah, OK 74464

Dear Chief Swimmer:

The Choctaw Nation of Oklahoma has chose to support the Cherokee Nation in its efforts for Hydro-Electric Development.

It is with great admiration that we see such a large undertaking by an Indian Tribe, namely the Cherokee Nation.

I and the Choctaw Nation will assist in any way to make this Economic Development project a success.

With Warmest Regards,

Hollis E. Roberts, Chief
Choctaw Nation of Oklahoma

the
Chickasaw
Nation OFFICE OF THE
GOVERNOR
520 E. Arlington / Box 1548 / Ada, Okla. 74820 / (405) 436-2603

OVERTON JAMES
GOVERNOR

June 21, 1985

Chief Ross O. Swimmer
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74464

Dear Chief Swimmer:

The Chickasaw Nation supports the Cherokee Nation in its efforts for a proposed hydroelectric project at W. D. Mayo Lock and Dam 14.

If we can be of assistance, please contact us.

Sincerely,

Overton James

Overton James, Governor
Chickasaw Nation

OJ:sg

Mr. WISE. We would say that there are three basic aspects of this legislation. One, of course, is the improved economic development for the tribe; two, the need for the electricity by the Southwestern Power Administration by 1991; and three, this particular project can serve as a blueprint for Federal and non-Federal cooperation using non-Federal funds, follows the current administration policy as outlined in President Reagan's letter to Senator Paul Laxalt in January 1984.

We feel that this project is large enough to be looked at that as a blueprint, and yet small enough where all parties can get hands around it and manage it. We've approached this in a very businesslike way. As to financing, we feel that it will be most realistic if we can finance this through a tax-exempt bond issue. Smith Barney, our financial advisor, has calculated numerous economic forecasts, both on variable rates and fixed rates.

We have sought legal opinion on the tax-exempt status. I think that was brought up briefly before the committee. We've talked with bond counsel and tax counsel. There is a serious question in terms of whether this is an industrial revenue bond.

The fact that the temporary regulations of the IRS have broadly looked at the Indian Tribal Tax Status Act. They have more or less concluded that anything that is grantable under CFR 25 is an essential Government function, particularly if the proceeds are earmarked for these Government funds and not for individual distribution. But that is still a very iffy question, and is the reason that we really need congressional support for tax-exempt legislation.

We feel it would still be revenue neutral in the fact that we would provide 200 to 300 jobs in this extremely depressed area where there's over 50 percent unemployment of the Indian population. Those jobs would be provided for a period of 2 to 3 years. Of course the Federal income tax would be derived from that. People would be removed from the relief roles, and other Federal assistance would be diminished for that particular time.

And also, the power could be used to further the economic development of the area, and we would put the proceeds of our royalties into that also.

I think, gentleman, that with the remarks and with what we have submitted in writing will conclude my testimony. We would appreciate your support in the passage of this legislation.

[Mr. Wise's prepared statement on S. 1724, on behalf of the Cherokee Nation of Oklahoma, follows:]

SELECT COMMITTEE ON INDIAN AFFAIRS

Senate Bill 1724

HYDROELECTRIC POWER GENERATING FACILITY

Sept. 6, 1839

CHEROKEE NATION
P.O. Box 948 • Tahlequah, Okla. 74465 • (918)456-0671

Ross O. Swimmer
Principal Chief

Wilma P. Mankiller
Deputy Chief

Testimony Before Select Committee on Indian Affairs
on October 23, 1985 - Senate Bill 1724

The Cherokee Nation of Oklahoma is continually seeking new methods for improving its revenue stream in order to assist the Tribe in lessening its dependence on Federal funds. In late 1983, we learned of the Federal studies recommending a hydroelectric power generating facility being added to the existing W.D. Mayo Lock and Dam 14 (Lock & Dam 14) on the Arkansas River, but without any follow on Congressional authorizing action to allow for the project to be constructed.

We retained the Council of Energy Resource Tribes (CERT), of which the Cherokee Nation is a member, for evaluation and recommendations regarding construction and operation of the facility as a viable business development project. CERT gathered all existing reports and feasibility studies, and upon review, suggested to the Cherokee Nation that there indeed were some definite possibilities worth considering. The information pointed toward a low head hydro power facility of approximately 40 MWE, costing some $77,000,000 (1979 dollars). Encouraged by this, Cherokee Nation asked CERT to do the homework necessary to investigate the avenues that might be available for this development.

By late 1984, a plan of action was devised by CERT and approved by Cherokee Nation, to approach the major private industrial firms in the U.S.A. who are vertically integrated enough to provide a project of this nature with everything from Equity Financing to Conaruction and Operation.

Beginning in April of 1985, a series of meetings resulted in a coordinated effort of SWPA, COE and Cherokee Nation worked to reach an agreement that could be furnished to the Oklahoma Congressional delegation for them to offer to Congress as an enabling Act. We wish to acknowledge and thank the staffs of Senator Boren and Senator Nickles for developing the legislative language from this agreement.

Also beginning in April, 1985, Southwest Hydro Associates began their initial task of evaluating all of the technical information which had been developed on L & D 14 , including considerable interaction with the CoE and Southwestern Power Administration. By September, they had evolved a conceptual project design and cost estimate in sufficient detail which can be utilized by Smith-Barney for purposes of obtaining the project financing.

PROJECT DESCRIPTION

The proposed project would involve the design and construction of a hydroelectric generating facility at the existing W.D. Mayo Lock and Dam No. 14 (L & D 14) on the Arkansas River. L & D 14 is a major facility with the McClellan-Kerr Arkansas River Navigation System which extends from the confluence of the Mississippi River upstream to Catoosa, Oklahoma. The installation is located at Arkansas River Mile 375.0 within Sequoyah County, Oklahoma, and is approximately 9 miles southwest of Fort Smith, Arkansas. L & D 14 is under the jurisdiction of the Tulsa District of the U.S. Department of Army. Corps of Engineers.

Until site specific design studies can be conducted, it is envisioned that facilities will consist of three (3) bulb turbines with a combined installed capacity of 37.5 megawatts electric (MWE), powerhouse, headrace and tailrace channels, substation and other support facilities. The maximum available power head is 20 feet. The average annual electric energy production is estimated at 142 GWH. The powerhouse facilities to accommodate the turbines will have exterior dimensions of approximately 200 feet wide by 200 feet in length by 100 feet in height.

Eighteen companies were contacted, and asked to develop their interest and proposals for the project. A thorough screening and evaluation was conducted over a period of months to select the best proposal.

During the initial proposal presentations, the intent of the project was to seek a construction license through the Federal Energy Regulatory Commission. Discussions during the meetings brought out a second possible approach: Non-Federal project funding with Federal operation and maintenance. In essence, the scenario would have Congress authorize the project in a manner that would allow the Cherokee Nation to provide the non-Federal funding by accomplishing the project development (Design and Construction) with private funds. This would include providing for the costs of oversight of design and construction for the Corps of Engineers. The ownership of the completed project would then be turned over to the Corps for their operation and maintenance. The Southwestern Power Administration would market the power to its preference customers thru its interconnected system. The monies thus received would be sufficient to pay all debt service plus a reasonable royalty to the Cherokee Nation.

While the developer/contractor selection process was taking place, a continual communication was being carried on with Southwestern Power Administration and Corps of Engineers, to define the mutually agreed upon parameters required to carry out the project. These covered such items as responsibilties of the various parties during the design and construction phases, in addition to various financing alternatives. Also, during this period, CERT prepared, coordinated and submitted the Preliminary Permit Application to FERC.

In order to maintain harmony and acceptance of the project in the area, the other major local Indian Tribes, the Choctaw and Chickasaw Nations, were contacted and expressed their support of the project.

In order to furnish the power to the marketing transmission system, a new transmission line of 161-kV capacity will most likely be required. This line will originate at the station which will also include a step-up substation. This transmission line will extend approximately 17 miles in a northerly direction and will terminate at the existing Sallisaw switching station some 20 miles northwest of the Lock and Dam number 14.

## SCHEDULE

Should the proposed legislation be approved by Congress in 1985, the project could be producing power for the SWPA grid by 1990. The following milestones have been set to bring this about.

Following the successful legislation enactment, the Cherokee Nation would negotiate contractual agreements with CoE and SWPA that should allow for the following schedule:

- Obtain interim financing for the project development by December, 1985.
- Begin final project design in January, 1986.
- Begin project construction in January, 1987.
- Obtain long term financing prior to conclusion of construction.
- Constuction completion and checkout by first quarter, 1990.

## BENEFITS

This project has great potential for all parties involved. The Cherokee Nation, in return for the private development, will receive a reasonable royalty to further the economic and social well-being of the Tribe. The CoE will own and operate the installation in the most efficient manner, consistent with the entire Federal Arkansas River System operation. The SWPA will receive much needed power for its preference customers.

It is hoped that this will set a blueprint for others to successfully interact with the Federal hydropower system in a "win-win" situation, such as the Cherokee Nation.

Mr. TAYLOR. Mr. Wise, I would like to ask you a few of the questions that Senator Burdick asked the Interior Department. From the record we've received at this point, I think the Interior Department must have been caught somewhat cold on this whole thing.

We obviously are going to have to seek the opinions of the other agencies that Interior has named, but you indicate that you have been working closely with the Corps of Engineers at the local level, and this has now gotten at least to the Dallas level.

Mr. WISE. Yes, the Cherokee Nation management, including Principal Chief Swimmer, and the project's technical contractors have met several times with the Corps of Engineers staff in the Tulsa District, and Dallas Division offices, including the Commanding General of the Southwestern Division. In addition, we have been in close touch with the DOE's Southwest Power Administration staff and management. Not only have they been most helpful in discussions of project design, construction and power production and marketing, but participated in drafting of the legislative language you have before you. Following several months of meaningful dialog, the these agencies arranged for meetings with their Washington superiors.

Mr. TAYLOR. Has there been any contact with the Department of the Treasury with respect to, first of all, perhaps eliciting an opinion from Treasury without this legislation, or whether or not they would support what we're doing here in this legislation?

Mr. WISE. No, sir, we have not had formal contracts with the Treasury Department.

Mr. TAYLOR. Have you had any informal contacts?

Mr. WISE. Some informal contact would indicate that we would be better served to try to have the tax exempt proportions remain in the bill.

Mr. TAYLOR. I think that undoubtedly means we're going to have to consult with the Finance Committee on this legislation also.

Mr. WISE. If it came to the case of whether the entire bill absolutely would not be passed because of the tax exempt portion, then we would agree to its removal. We would work to restructure the project based on taxable financing. All of the information I have seen to the present shows that his will increase the costs to every party involved. We're talking something in the neighborhood of $70 million to design and construct this project, not including financing.

Following that thought, if it's nontaxable, we're going to add somewhere around $12 to $14 million on that. And these are estimates, gentlemen. And if it's taxable, we could add up to $36 million to that.

In the same context, however, I think that another of the questions addressed a moment ago was the cost of private development compared to corps construction. For this project we don't know the new estimates from the corps, but based on the previous estimates, it would appear that the project, producing approximately the same megawatts of electricity constructed by the corps, would be in the neighborhood of $100-plus million, not counting financing, while we're talking some $70 million construction costs. Therefore, we're talking a $30 to $50 million difference by private means rather than going through the corps at the present time, not including the cost of financing.

Mr. TAYLOR. Well, actually that goes to a question that I was going to ask you. Your projected cost on this was $77 million based on 1979 dollars, and the S. 1567 authorization, that apparently is pending here in the Congress, authorized an appropriation of $119 million.

I was wondering if you have any current cost projections.

Mr. WISE. I would like to defer that to Mr. Moody from the Benhan Holway engineering group.

Mr. MOODY. Our company has just completed a report that is available—I know there are several around the room—in which we joined with Manhattan Construction Co., and have estimated the cost of the project at $70 million right now.

Mr. WISE. That is several million dollars less than what it would——

Mr. MOODY. That $77 million I think was an error. I don't know where that came from. We've said $70 million all along. To that, to emphasize what Mr. Wise was saying you would have to add the cost of capitalized interest, the interest costs that accrue during the construction period. If that is nontaxable, it is estimated to be somewhere in the $12 to $15 million range. If it is taxable, it may be as high as $30 to $35 million.

Of course, then after the project is operating, your debt service with the taxable issue is considerably higher than if you have a nontaxable issue. So, we're saying it is possible to involve as much as one and a half to two cents more per kilowatt hour if it is a taxable issue.

Mr. TAYLOR. Well, OK. I'm interested in the funding mechanism on this. If in fact there is a conflict between this bill and the other one that Energy and Natural Resources has just reported out, I think a question that arises is the certainty that this project can in fact be carried through with this private funding mechanism.

So the question is, what funding mechanism do you propose to use, and how certain are you of your ability to raise this money?

Mr. WISE. Well, when you go into the bond market, you of course do not go in with 100 percent certainty. Fortunately, we have, along with the Benham Holway Power Group, Smith Barney, who is acting as the financial consultant for that group and for this project financing.

They feel that when we enter into the contractual negotiations—which we would do under this legislation—with the Corps of Engineers and the Southwestern Power Administration, we would come out of that with a 50 year contract to take the power from this. The debt service proceeds from that contract would be earmarked to pay off the bond issue.

That would probably be a very good omen to potential buyers of bonds. And we feel with certainly that we can find a market for the bonds needed for this project.

Mr. TAYLOR. Mr. Wise, do you have any explanation for why the operation and maintenance costs for this project are treated differently than apparently other Corps of Engineering projects are—that is, I understand under this bill, operation and maintenance cost of the corps would be funded through annual appropriations from the Congress rather than simply recouped by an addition to the charge of the power generation.

Mr. ARONSON. I represent the Council of Energy Resource Tribes, which acts as an advisor to the Cherokee Nation, in our discussions with the Corps of Engineers and the Southwestern Power Administration—who, I might add, were very helful in helping in putting all of this legislative language together. It was at their suggestion that the legislation be stated in the manner that the reimbursement to the Cherokee Nation be made from the system revenues of Southwestern Power. And in the normal course of their operation, Southwestern Power Administration would apply to Congress for their annual request for appropriation for the routine operation by the Corps of Engineers, as they do for all of the 2,000 plus megawatts of power that is produced by the corps and marketed and transported by the Southwestern Power Administration.

Mr. TAYLOR. Just for clarification, is the Southwestern Power Administration a Federal agency or——

Mr. ARONSON. Yes, sir. It's the same thing as Western Power Administration—Bonneville Power—which reports to Assistant Secretary of Energy Donna Fitzpatrick.

Mr. TAYLOR. All right.

Mr. ARONSON. May I add one other thing? With regards to the Benham Holway Power Group, one of the reasons that we, as advisors to the Cherokee Nation, advised them to select that private industrial venture was all of the experience they have in the design and construction not only of this type of hydroelectric facilities, but in actual work experience in the local areas and their long time successful interaction with the Corps of Engineers.

So that when they are furnishing us cost estimates, it is based on fact and actual on-site experience.

Mr. TAYLOR. I would really have only one further question. Were you aware of the fact that Interior Department had concerns about "other issues arising from this legislation"?

Mr. WISE. No, sir.

Mr. TAYLOR. We didn't learn it until last night. I'm not sure that I followed the issues as they were particularly spelled out, but do you intend—and I see that Mr. Reeser is still here—to get together with the Department of the Interior and iron this out?

Mr. Wise. We certainly do, sir. May I add just one more thing, and then I'll leave this particular issue?

Mr. TAYLOR. Go ahead.

Mr. WISE. The Benham Holway Power Group is working on a very similar project as the next lock and dam down, the Arkansas River. It's the Arkansas Electric Coop——

Mr. MOODY. Arkansas Electric Cooperative Corp. is presently constructing an almost identifical hydro facility at lock and dam 13, which is just east of Fort Smith, just over the Oklahoma border. And I understand that this bill, S. 1567, also includes Federal authorization for that project. But I just thought I'd advise you that our client started construction on that project 2 weeks ago.

Mr. WISE. That's one of the reasons for our comfort with the cost estimate—more or less the cost because they've been in an identical project.

Mr. TAYLOR. You had some plans, I guess, that you've put together here. I believe you testified to it. Could we have copies of those—

Mr. WISE. We would enter this into the records.

[The material referred to has been retained in the files of the committee.]

Mr. TAYLOR. I don't have any questions. John, do you?

Mr. VANCE. No.

Mr. TAYLOR. Thank you very much for the testimony on S. 1724. We might just as well move right into the next two bills. Let's take the 99-year lease bill next. That's S. 1728. Mr. Wise?

Mr. WISE. Sir, we are pleased to testify on Senate Bill 1728, the proposed 99-year lease of Cherokee trust lands, and would direct reference to the Port Authority of Muskogee. We have entered into this for two reasons again; the economic and social well-being of the tribe, the protecting of our ownership as reviewed by the Supreme Court of the Arkansas Riverbed.

In the written testimony that we have submitted, you will, of course, find the legal history leading up to the Supreme Court decision, and the current case that was in the district court, this lease operation. By this lease, the port authority has agreed to drop the case in the district court concerning ownership—in the Tenth Circuit Court of Appeals, excuse me. This clears the way for the more important legal issues of navigational servitude that will be heard by the Supreme Court.

The issues involved here are the normal industrial type lease. We want to develop the industries of eastern Oklahoma on the Cherokee land. And as you go forward with someone like the port authority or private investors coming in to build a plant, one of the things they look to is long term leases. And a 99-year-lease type situation is not unusual in the industrial community when you're looking to provide jobs and so forth.

So, from that standpoint we feel that it would put us on a more equal footing with State, county, city type operations that allow for 99-year leases.

On the second and very important issue, it does clear the legal or the judicial calendar in allowing the very important case of navigational servitude to be heard without clouding that issue with some other decision.

I feel that that is all the testimony that I would have. I could answer questions on that—answer your questions, sir.

[Mr. Wise's prepared statement on S. 1728, on behalf of the Cherokee Nation of Oklahoma, follows:]

SELECT COMMITTEE ON INDIAN AFFAIRS

Senate Bill 1728

NINETY-NINE YEAR LEASES

ON TRUST LANDS

Sept. 6, 1839

CHEROKEE NATION
P.O. Box 948 • Tahlequah, Okla. 74465 • (918)456-0671

Ross O. Swimmer
Principal Chief

Wilma P. Mankiller
Deputy Chief

Testimony To The Select Committee on Indian Affairs
on October 23, 1985 - Senate Bill 1728
To Section 1, the Act of August 19, 1955 (69 Stat. 539) as ammended (25 U.S.C. 415)

Members of the Committee, the Senate bill lying before you would allow ammendments to 25 U.S.C. 415 permitting the Cherokee Nation of Oklahoma to enter into leasing arrangements on trust lands for a period of ninety-nine (99) years. The need for this ammendment is specific in relation to land utilized by the Muskogee Port Authority and is also deemed necessary as we approach industrial organizations soliciting the installation of operations within the Cherokee Nation on trust lands. Most organizations investing considerable capital will be looking for ninety-nine year leases. We have entered into an agreement with Muskogee Port Authority that the Port Authority will take a twenty-five (25) year lease with a twenty-five (25) year option and pay the Cherokee Nation $25,000 for the first term and a renewal of $25,000 for the second term. The Muskogee Port Authority has dropped their suit in the Tenth Circuit Court and desires to enter into a second lease agreement, carrying a fifty (50) year primary term for payment of $50,000 with an option to renew an additional forty-nine (49) years for an additional $50,000. Under the present version of 25 CFR 162.8 (a), the local Area Director of the Bureau of Indian Affairs was unable to approve the ninety-nine year lease. We feel that a brief history concerning the Arkansas Riverbed litigation should be presented at this time.

By the Treaty of Echota with the Cherokees in 1835, and subsequent fee patent in 1838, the United States granted a vast area of its western territory, today northeastern Oklahoma, containing approximately 14 million acres to the Cherokee Nation. The property in question was described by metes and bounds and included the Arkansas River in its entirety from its confluence with the Grand River near Ft. Gibson, Oklahoma, south to is confluence with the Canadian River and east to the Arkansas border. The lower stretch forms the border between the Cherokee Nation on the north and the Choctaws and Chickasaws on the south.

These lands were promised to the Cherokees as a "permanent home, and which shall, under the most solemn guaranty of the United States, be, and remain, theirs forever..." However, with a change of United States policy towards the Cherokee and a continued encroachment by the white settler, Congress passed the Curtis Act, June 28, 1889, directing tribal leaders to execute agreements with the government for the allotment of their lands. In the face of Cherokee Agreement of July 1, 1902, with representatives of the United States providing for the allotment of the tribal lands to individual members of the Cherokee Nation. Under this agreement, the United States assumed full administrative control over all of the property and affairs of the Cherokee Nation to carry out the provisions of the Curtis Act and the 1902 agreement.

Most of the land contained within the borders of the Cherokee Nation was alloted. Any unalloted lands were held by the United States in trust for the Cherokee Nation.

In December, 1966, the Cherokee Nation brought suit in the United States Court for the Eastern District of Oklahoma against the State of Oklahoma and various corporations to which the State had leased oil and gas and other mineral rights. The Cherokee Nation in essence, claimed that it was, and had been, since 1835 the fee simple owner of the Arkansas riverbed and that the same had passed to the Cherokee Nation in 1835 and was never reserved by the United States for its own purposes or for the future State of Oklahoma. Choctaw Nation of Oklahoma, 397 U.S. 620, 25 L.Ed 2nd 615, 90 S.Ct. 1328 (1970). The United States Supreme Court concluded "that the United States intended to, and did convey, title to the bed of the Arkansas River below its junction with the Grand River within the present State of Oklahoma in the grant it made to petitioners." It should be noted, however, that the following statement was also made in the opinion, "Indeed, the United States seems to have had no present interest in retaining title to the riverbed at all; it had all it was concerned with in its navigational easement by the constitutional power over commerce." While it has been our opinion that this is only dictum and has been cited by both United States and Port Authority as authority that the navigational servitude case has already been decided. It must be considred that the United States as well as the Port Authority, both maintain that whatever title the Cherokee Nation has is qualified by the constitutinal power of navigational servitude. If this position is ultimately sustained by the Supreme Court, it is seriously doubted that the Nation will be able to collect any monies from any users of the riverbed.

In any event, following the Supreme Court's decision, Congress appropriated funds to the Department of the Interior to determine the value of the riverbed interests. Interior, in turn, commissioned independent appraisers to conduct the evaluation. The appraisers completed their study in 1976, estimating that the Indian interets were worth, in agrregate, $177,000,000.00. However, since that time, another appraisal has been conducted by the Cherokee Nation based upon a fair annual royalty approach substantially reducing this figure and negotiations with the Justice Department in attempts to settle the United States case have centered around a $30,000,000.00 to $50,000,000.00 figure.

All attempts to settle with the government, either on a lease or purchase basis have failed. Upon receipt of the initial appraisal, the Cherokee Nation sought to lease the entire Cherokee interest to the United States for a ninety-nine (99) year term for an annual rental of 5.8 million dollars. However, the United States ultimately refused the offer. Soon thereafter, the Cherokee Nation requested the United States pay 8.5 million damages for the destruction of sand and gravel deposits in the riverbed during construction of the Kerr-McClellan navigation system. This claim was also ultimately denied, United States relying on navigational servitude.

In 1981 the Oklahoma congressional delegation introduced a bill in support of enabling legislation allowing the Cherokee Nation to bring claims against the United States for any and all damages related to the aforementioned navigation project including the three dam sites.

The Port Authority case was settled to avoid any possibility of that decision affecting the much more important United States case. It will also facilitate negotiations with other users while the United States case is pursued. If the United States case is ultimately successful, the proceeds will greatly outweigh any potential additional recovery in Port Authority. If the United States is not successful then the Cherokee Nation has received $50,000.00 it was not entitled to.

I wish to thank this Committee for allowing us to enter the history and testimony. Regardless of the outcome of the particular riverbed case, it would be to the advantage of the Cherokee Nation to be able to grant ninety-nine year leases on trust land to facilitate economic and social develoment of the Nation. We respectfully request your recommendation for approval of the legislation before you.

Mr. TAYLOR. Mr. Wise, I don't have any questions, but I think John Vance, our staff attorney, does.

Mr. VANCE. Mr. Wise, the proposal provides for a $50,000 onetime payment for a 50-year lease with an option to the leasee to renew that lease for 49 years for an additional $50,000. And the committee would like to inquire if you have considered the problem of creeping inflation, which we have had since World War II, when you arrived at that second $50,000 which is 50 years hence if it comes up?

Mr. WISE. That's a long time. Basically the way we've looked at this as a Cherokee Nation, while we realize that perhaps we might have been harder negotiators for additional funds for that second 50 years, we are extremely interested in being a good neighbor and a promoter of the economic well-being for all people in eastern Oklahoma. And the Muskogee Port Authority, in operating this port, does provide jobs, jobs for Indian people that are working in industry around the area, and are looking forward to further develop that area for industry.

And I'm sure that in the negotiations Chief Swimmer took that into consideration. We wanted to be reasonable because we feel that other benefits would accrue the nation in the form of employment of the Indian people if this developed in a reasonable way. And that is why we agreed with these particular lease arrangements.

Mr. VANCE. I suppose once again the Department of the Interior, representing the trustee, should analyze this problem and make sure that the trustee meets its obligations as trustee with regard to that inclusion. And that again can be established.

Just one other question. What is the status of the litigation regarding the leasing of the riverbed for mineral exploration? And if you don't have that, perhaps you could supply it to the committee.

Mr. WISE. I would really like to provide that for you for the record.

Mr. VANCE. Certainly.

[At the request of Mr. Vance, the following additional information was received from Mr. Wise for inclusion in the record:]

### RESPONSE RECEIVED FROM MR. WISE

There are two cases, *Cherokee Nations* v. *United States* and *Cherokee Nations* v. *Muskogee City/County Port Authority* that are currently pending in the 10th Circuit Court of Appeals. The cases have been briefed and argued and are awaiting a decision.

Mr. TAYLOR. I would just have one followup question on what John just asked there. In your opinion, does this legislation in anyway affect that litigation one way or the other?

Mr. WISE. No, sir, we do not feel that this would affect the litigation at all.

Mr. TAYLOR. I think the Justice Department——

Mr. WISE. Or if the Supreme Court ruled against—well, then that would mean that we had collected $50,000 that we're not due. But we feel that we will prevail on this particular issue.

Mr. TAYLOR. I think the Justice Department apparently concurred that there was no conflict. Otherwise this would not have cleared OMB in the matter——

Mr. WISE. That's my understanding.

Mr. TAYLOR. I don't have any further questions on this bill. Why don't we move on to the S. 1684, the bill to declare the United States hold certain Chilocco Indian School lands in trust to the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Tribes. And for this testimony, Mr. Wise, why don't we invite the other tribal chairmen to join you at the table.

Mr. WISE. Please.

Mr. TAYLOR. I might just say that the staff attorney handling this bill is Mike Mahsetky. I've hardly looked at this at all, so I want Mike to conduct the rest of the hearing here. If you could simply identify yourselves for the record when you speak, then we'll go from there.

Mr. CHOUTEAU. Mr. Chairman, my name is Marcellus Chouteau. I'm the chairman of the Kaw Tribe.

Mr. ALLEN. Mr. Chairman, I'm Johnny Allen, vice chairman of the Tonkawa Tribe.

Mr. MAHSETKY [presiding]. Mr. Wise, would you like to go ahead and complete your statement——

Mr. WISE. You want me to lead off with this one?

Mr. MAHSETKY. Please.

Mr. WISE. I believe the history of the lands was well presented by the Department of the Interior; the fact that this was part of 14 million acres that was originally Cherokee Nation land as provided in the treaty of May 6, 1828, and approved on May 17, 1882 in Congress. And the fact that legislation later on established the Indian vocational schools in Indian country, of which Chilocco was one of the schools.

It operated until June 15, 1980. It was closed and the property reverted to surplus. The Cherokee Nation at various times had requested transfer under Public Law 93-599. And again, a few years ago they met with the five tribes—and this was before my time—and for the same reason, these five tribes of the Pawnee Agency are looking to develop their economic base and their land base. And after negotiation, and after yes it can be and no it can't be transferred, and this type of a thing, on August of this year we reached an agreement between six Indian tribes, which is probably a milestone in history at that point.

It allows us—we would, if the land is transferred to the Cherokee Nation, either legislated or under Public Law 93-599, we entered into agreement that we would transfer three-fourths of the land area to the five tribes of the Pawnee Agency, we would retain one-fourth, and that we would be tenants in common on a 50-50 basis for the mineral interests for the entire plot.

We certainly support the five tribes in wanting to further their economic development and social well-beings of their members. And under any circumstances we will go through, if this legislation is passed, with the appropriate transfers. Or if it is the legislative route that I frankly just heard of this morning, what I've heard I'm not sure where the Department of the Interior stands on Public Law 93-599 as of this morning.

We're in agreement with a legislative action to do the whole thing, and we're certainly in agreement to living by our agreement if it is transferred under Public Law 93-599, to make the transfers to the other tribes.

Mr. **Mahsetky**. Thank you.

[Mr. Wise's prepared statement on S. 1684, on behalf of the Cherokee Nation of Oklahoma, follows:]

SELECT COMMITTEE ON INDIAN AFFAIRS

Senate Bill 1684

CHILOCCO SCHOOL LANDS

Sept. 6, 1839

CHEROKEE NATION
P.O. Box 948 • Tahlequah, Okla. 74465 • (918)456-0671

Ross O. Swimmer
Principal Chief

Wilma P. Mankiller
Deputy Chief

Testimony Before Select Committee on Indian Affairs

On October 23, 1985 - Senate Bill 1684.

The land in question was given by treaty to the Cherokee Nation on May 6, 1828. The United States guaranteed to the Tribe, 7 million acres of land situated in what become known as the Indian Territory and in addition, a perpetual outlet West consisting of another 6.5 million acres. Thereafter, Congress authorized the President to assure the Cherokee Nation title to such lands and to execute a patent thereto. Some time after the Tribes removal to the new lands, Congress authorized the Secretary to construct and establish Indian industrial schools in Indian Territory by Act of May 17, 1882. The school was later established at Section 15, Township 29N, Range 2E, Indian Meridian line within the outlet. Be executive order issued July 12, 1884, the Chilocco Reserve was increased to include Section 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, and the east half of Sections 17, 20, and 29. Under authority of Section 14 of the Act of March 2, 1889, an agreement was entered into between the Cherokee Nation and the United States whereby the Tribe agreed to convey the United States all of its rights in the land lying between $96^{0}$ and $100^{0}$ of west longitude, i.e., the outlet. The land known formerly as the Cherokee outlet including the Chilocco Reserve became the property of the United States.

The Chilocco School was closed on June 15, 1980 and the Chilocco Reserve became surplus property. The Cherokee Nation has requested that the lands be transferred to the Nation under Public Law 93-599.

The Five Tribes of the Pawnee Agency; Otoe-Missouri, Pawnee, Ponca and Tonkawa Tribes, desiring to further the social and economic well-being of the Tribe, requested that portions of the then surplus Chilocco Reserve be transferred to the Five Tribes of the Pawnee Agency, however, as the land was the original Cherokee outlet, Public Law 93-599 would allow the Secretary of Interior to accept the land in Trust only on behalf of the Cherokee Nation.

On August 5, 1985, an agreement to accomplish transfer to the Five Tribes land and mineral interest in the Chilocco School Reserve was entered into between the Five Tribes, the Cherokee Nation and the Bureau of Indian Affairs. Passage of Senate Bill 1684 will allow this agreement to take effect, upon the transfer of the Chilocco School Lands to the Cherokee Nation pursuant to Public Law 93-599. Thank you for your consideration and we ask your recommendation of approval for Senate Bill 1684.

Mr. MAHSETKY. Mr. Chouteau.

## STATEMENT OF MARCELLUS CHOUTEAU, CHAIRMAN, KAW TRIBE OF OKLAHOMA

Mr. CHOUTEAU. Mr. Chairman, it gives us great pleasure to appear before this committee to testify in favor of the passage of S. 1684. As I said, I am Marcellus Chouteau, chairman of the Kaw Tribe of Oklahoma. With me today are Mr. E.O. Hudson, vice chairman of the Otoe-Missouria Tribe; and on my far left here is Mr. Allen, vice president of the Tonkawa Tribe.

I wish to thank our Senators Don Nickles and David Boren for their prompt response to our request to introduce this legislation. I also thank this committee for its quick action on the bill.

The purpose of this bill is to carry out an agreement between the Cherokee Nation of Oklahoma and the five tribes of the Pawnee Agency; the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Tribes of Oklahoma, about the disposition of the 5,800 acres of the Chilocco Indian School Reserve located in Kay County, OK.

When the Chilocco School closed in 1980, the five tribes and the Cherokee Nation both expressed interest in obtaining the Chilocco School Reserve for economic development purposes since both had legitimate claims to the land. At the urging of the Bureau of Indian Affairs, the five tribes and the Cherokee Nation negotiated an agreement to divide the Chilocco Indian School property among them on the following basis: The surface estate, the Cherokee Nation 25 percent and the five tribes 75 percent; the mineral estate, the Cherokee Nation 50 percent and the five tribes 50 percent.

In August of this year, an agreement was reached between the Cherokee Nation and the five tribes under which the entire 5,800 acres would be administratively transferred to the Cherokee Nation under Public Law 93-599, and the agreed upon interest of the five tribes would then be legislatively transferred to them. All of these interests would, of course, be held by the United States in trust for the Cherokee Nation and the five tribes.

The agreement also provided for the partition of the surface of the land between the Cherokee Nation and the five tribes into two defined tracts. The agreement also called for the Cherokee Nation to manage the entire Chilocco School Reserve during the period between the administrative transfer to the Cherokee Nation and the legislative transfer to the five tribes.

This agreement led to the introduction of the legislation that you have before you. The legislation is intended as a straightforward means of implementing the agreement between the Cherokee Nation and the five tribes. It provides in section 2 for the transfer of the surface interests in the described 4,200 acre tract to the five tribes. It also permits the five tribes to partition the surface estate among themselves with the approval of the Secretary of the Interior. It provides in section 3 for the transfer of an undivided half interest in the mineral estate to the five tribes. Section 4 projects any valid existing interests from being affected by the transfer.

Section 5 of the bill is intended to address the status of surplus funds that the Bureau of Indian Affairs has derived from grazing permits and from mineral leases on the Chilocco School property. We understand that the BIA derives an annual income of $100,000 from grazing permits and $23,000 from mineral leases on the Chilocco School land. These funds have been used to maintain the property, but we understand that there is a surplus that remains in BIA IMPL accounts.

Section 5 of the bill authorizes the transfer of this surplus funds to the five tribes and the Cherokee Nation in accordance with their agreed upon interests in the surface and mineral estates. It also limits the use to which the transferred funds may be put to development purposes related to the transferred property.

The five tribes have asked Congress to approve this transfer of funds because it would greatly speed development efforts for this land. None of the five tribes are wealthy and none have any start-up capital to begin economic development activities on the transferred lands. The funds in the BIA hands can provide that capital and give the five tribes the flexibility to begin to explore economic development ventures other than simply leasing the land for farming or grazing immediately after transfer.

The transfer of the surface estate in the Chilocco School lands represents the only opportunity to develop a land base for income and employment generating ventures that is reasonably available to the five tribes. It is the only substantial tract of land that is or is likely to become available to the tribes in the foreseeable future.

Without the use of these lands, most of the five tribes would not have available land upon which any kind of new economic development venture could be built. The existence of the school buildings also provides some opportunities for unique uses for the land that would not otherwise be available.

This bill is the result of an historic intertribal agreement amicably resolving the claims to the Chilocco School Reserve. The bill also represents an important opportunity for economic development and self-sufficiency to the five tribes of the Pawnee Agency. We hope that you can act quickly and favorably on this bill.

Thank you, gentlemen, for the opportunity to present these remarks.

Mr. **MAHSETKY**. Thank you, Mr. Chouteau.

[Mr. Chouteau's prepared statement, on behalf of the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Tribes of Oklahoma, follows:]

## STATEMENT OF M.M. CHOUTEAU, CHAIRMAN OF THE KAW TRIBE OF OKLAHOMA ON BEHALF OF THE KAW, OTOE-MISSOURIA, PAWNEE, PONCA AND TONKAWA TRIBES OF OKLAHOMA IN SUPPORT OF SENATE BILL 1684

### "A BILL TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN CHILOCCO INDIAN SCHOOL LANDS IN TRUST FOR THE KAW, OTOE-MISSOURIA, PAWNEE, PONCA AND TONKAWA INDIAN TRIBES OF OKLAHOMA"

Mr. Chairman, it gives us great pleasure to appear before this Committee to testify in favor of the passage of Senate Bill 1684. I am Maurice M. Chouteau, Chairman of the Kaw Tribe of Oklahoma. With me today are E.O. Hudson, Vice Chairman of the Otoe-Missouria Tribe, Sylvester Kemble Vice Chairman of the Ponca Tribe and Johnny Allen, Vice President of the Tonkawa Tribe. I wish to thank our Senators Don Nickles and David Boren for their prompt response to our request to introduce this legislation. I also thank this Committee for its quick action on the bill.

The purpose of this bill is to carry out an agreement between the Cherokee Nation of Oklahoma and the Five Tribes of the Pawnee Agency; the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa Tribes of Oklahoma about the disposition of 5,824.13 acres of the Chilocco Indian School reserve located in Kay County, Oklahoma. Before describing the agreement I would like to review the history of the Chilocco School.

In an Act of May 17, 1882, Congress authorized the Secretary of the Interior to build an Indian Industrial School "at a point in the Indian Territory adjacent to the southern boundary of the State of Kansas and near to the Ponca and Pawnee reservations." 22 Stat. 68,85. The school was to be built on one section of land. It was to accomodate 150 Indian students. The school was to serve "the children of such of the Indian Tribes located in the Indian Territory as are least provided for under existing treaties or laws." Id. The school was established on Section 15, Township 29 North, Range 2 East, Indian Meridian, its present site.

The land on which the original school was built, was a part of the Cherokee outlet, the 6.5 million acre tract that comprised the Cherokee Nation's "perpetual outlet west" in its Treaties of 1828 and 1833. 7 Stat. 311; 7 Stat. 414. Under its Treaty of 1866, the Cherokee Nation agreed to permit the United States to settle friendly Indians on lands in the outlet and to purchase that land for reservations for such Indians. 14 Stat. 799. The Oklahoma reservations of the Otoe-Missouria, Pawnee, Ponca and Tonkawa Tribes were created and purchased under these treaty provisions. The Kaw Tribe acquired its land from the Osage Nation who had acquired it from the Cherokee Nation.

In 1884, the Chilocco School Reserve was created by Executive Order. 12 sections and 3 half sections (sections 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28 and the east half of sections 17, 20, and 29) were reserved "for settlement of such friendly Indians belonging within the Indian Territory as have been or who may hereafter be educated at Chilocco Indian School."

In 1893, as part of the purchase of the Cherokee outlet from the Cherokee Nation and the opening of that land to public settlement, Congress confirmed the Chilocco School Reserve as an reservaion from the opening of Cherokee outlet lands to settlement. 27 Stat. 612, 640. The 1893 act provided that the Chilocco School Reserve "shall not be subject to public settlement but shall, until further action of Congress, continue to be reserved for the purposes for which they were set apart in the [1884] Executive Order."

Because of its proximity to the Five Tribes of the Pawnee Agency, (the former Kaw Reservation is only five (5) miles from the school, and the former Pawnee Reservation, the furthest from the school, is fifty (50) miles away) the Chilocco School has been the primary institution at which the members of those

Tribes were educated. When it was authorized and created, its proximity to the Five Tribes assured that they would be the primary beneficiaries of the Chilocco School. The school was created at about the time the tribes were removed to their current lands and at the time when they were the least provided for in terms of the availability of schools.

In 1906, Congress authorized the Commissioner of Indian Affairs to lease portions of the Chilocco School Reserve not needed for "school-farming purposes" and to apply the proceeds to the maintenance and support of the school. 34 Stat. 324, 362. The Bureau of Indian Affairs has at various times entered into mineral leases and grazing permits for the land and such leases and permits continue today.

Between 1959 and 1969 Congress authorized seven transfers or sales of lands within the Chilocco School Reserve. See, 67 Stat. 41; 75 Stat. 595; 82 Stat. 70. After these transfers, the Chilocco School Reserve still contains 5,824.13 acres. Most of the lands are farmlands. The campus of the Chilocco School has a variety of buildings, now vacant, and is the only developed area in the reserve.

In 1980, Congress prohibited further expenditure of appropriated funds to "continue academic and residential programs" at the Chilocco School after the end of the academic year. P.L. 96-726; 93 Stat. 954. This action resulted in the closure of the school but not in the disposition of the Chilocco School Reserve.

When the Chilocco School closed in 1980, the Five Tribes and the Cherokee Nation both expressed interest in obtaining the Chilocco School Reserve for economic development purposes since both had legitimate claims to the land. At the urging of the Bureau of Indian Affairs, the Five Tribes and the Cherokee Nation negotiated an agreement to divide the Chilocco School property among them on the following basis;

| | |
|---|---|
| Surface estate: | Cherokee Nation 25% |
| | Five Tribes 75% |
| Mineral estate: | Cherokee Nation 50% |
| | Five Tribes 50% |

Once this agreement was finalized, there were a number of false starts in trying to develop a method for transferring the Chilocco School land. Questions arose about whether the land could be transferred as excess property under P.L. 93-599 and to whom it could be transferred or whether legislation was necessary to effect the transfer.

Finally, in August of this year, an agreement was reached between the Cherokee Nation and the Five Tribes under which the entire 5,824.13 acres would be administratively transferred to the Cherokee Nation under P.L. 93-599 and the agreed-upon interests of the Five Tribes would then be legislatively transferred to them. All of these interests would, of course, be held by the United States, in trust for the Cherokee Nation and the Five Tribes. The agreement, a copy of which is attached this statement, also provided for the partition of the surface of the land between the Cherokee Nation and the Five Tribes into two defined tracts; one tract of 1561.81 acres to be separately held in trust for the Cherokee Nation and the second tract of 4,262.32 acres to be separately held in trust for the Five Tribes.

The agreement also called for the Cherokee Nation to manage the entire Chiilocco School Reserve during the period between the administrative transfer to the Cherokee Nation and the legislative transfer to the Five Tribes. In the interests of efficiency the Five Tribes have also agreed that the Cherokee Nation will manage the mineral estate on behalf of all the interested tribes.

This agreement led to the introduction of the legislation that you have before you. The legislation is intended as a straightforward means of implementing the agreement between the Cherokee Nation and the Five Tribes. It provides in section 2 for the transfer of the surface interests in the described 4,262.32 acre tract to the Five Tribes. It also permits the Five Tribes to partition the surface estate among themselves with the approval of the Secretary of the Interior. It provides in section 3 for the transfer of an undivided half interest in the mineral estate to the Five Tribes. Section 4 protects any valid existing interests from being affected by the transfer.

Section 5 of the bill is intended to address the status of surplus funds that the Bureau of Indian Affairs has derived from grazing permits and from mineral leases on the Chilocco School property. We understand that the BIA derives an annual income of $100,000.00 from grazing permits and $23,000.00 from mineral leases on the Chilocco School land. These funds have been used to maintain the property, but we understand that there is a surplus that remains in BIA accounts. Section 5 of the bill authorizes the transfer of this surplus to the Five Tribes and the Cherokee Nation in accordance with their agreed-upon interests in the surface and mineral estates. It also limits the uses to which the transferred funds may be put to development purposes related to the transferred property.

The Five Tribes have asked Congress to approve this transfer of funds because it would greatly speed development efforts for this land. None of the Five Tribes are wealthy and none have any start up capital to begin economic development activities on the transferred lands. The funds in the BIA's hands can provide that capital and can give the Five Tribes the flexibility to begin to explore economic development ventures other than simply leasing the land for farming or grazing immediately after transfer.

The transfer of the surface estate in the Chilocco School lands represents the only opportunity to develop a land base for income and employment generating ventures that is reasonably available to the Five Tribes. It is only substantial tract of land that is or is likely to become available to the Tribes in the foreseeable future. Without the use of these lands most of the Five Tribes would not have available land upon which any kind of new economic development venture could be built. The existence of the school buildings also provides some opportunities for unique uses for the land that would not otherwise be available. For example, the State of Oklahoma is currently exploring the housing of inmates of the State prison system on a contract basis. The facilities at the Chilocco school certainly provide a physical plant which could be the basis for negotiating such a contract. But the rehabilitation of the buildings for these purposes will require money; money that can only be obtained quickly through a transfer of the BIA's surplus funds with the land.

This bill is the result of an historic intertribal agreement amicably resolving the claims to the Chilocco School Reserve. The bill also represents an important opportunity for economic development and self-sufficiency to the Five Tribes of the Pawnee Agency. We hope that you will act quickly and favorably on the bill.

As you will note, the agreement between the Cherokee Nation and the Five Tribes and the bill that has been introduced are predicated upon the administrative transfer of the Chilocco School lands to the Cherokee Nation. We have recently been informed that the General Services Administration, which must approve the transfer, is of the opinion that the Chilocco School Reserve lands cannot be declared excess property and thus, cannot be transferred under P.L. 93-599. Our only desire in this matter is to see that the Chilocco School land is transferred to the Cherokee Nation and to the Five Tribes as quickly as possible in accordance with the agreements that have been made. If it will be more expeditious to accomplish the entire transfer by legislation we will support such legislation and are prepared to propose an amendment to the pending bill to accomplish that transfer.

Thank you for the opportunity to present these remarks and for your quick action on this bill.

Mr. **Mahsetky**. Mr. Allen, do you have any remarks that you would like to make?

Mr. **Allen**. Yes. I just have a very few.

## STATEMENT OF JOHNNY GENE ALLEN, VICE PRESIDENT, TONKAWA TRIBE OF OKLAHOMA

Mr. **Allen**. Thank you. My name is Johnny Allen. I am the vice president of the Tonkawa Tribe of Oklahoma. I wish to add a few words on behalf of the Tonkawa Tribe in support of Senate Bill 1684.

First, I wish to join Mr. Chouteau in thanking Senators Don Nickles and David Boren for all their help in drafting and submitting this bill. The Tonkawa Tribe also deeply appreciates the speed with which this committee has acted on this vital bill.

The transfer of the Chilocco School Reserve represents the only opportunity for economic development that is available to the Tonkawa Tribe. We are a small tribe with only 250 members. We have only 160 acres of tribal trust land, and most of that is used for housing for our tribal members and their families. Much of the land remaining is on flood plains and is not useable for anything but agriculture.

There is no chance that the Tonkawa Tribe could obtain any quantity of land on which to develop business ventures. There is no land in sufficient quantities for sale in the Tonkawa area. Our tribal land cannot be used to set up any income generating projects or projects to employ our tribal members. We have experienced severe cuts in Federal funding. We have virutally no income for our tribal trust funds. We have developed a small bingo operation which provides us our only source of unrestricted income. The funds generated by our bingo operation are used to make up for funding cuts and to provide emergency services for our tribal members.

We have, over the past several years, looked at the possibilities of using the Chilocco School land for agricultural and recreational development. To be frank, both the lack of money and the uncertainty that the transfer of the Chilocco School land would occur have hindered all our planning efforts.

This bill will give the Tonkawa Tribe access to the land base upon which we can begin badly needed economic development activities and the funding for planning and seed capital. For a small tribe like ours, this bill is essential and we urge your speedy passage of this bill.

Thank you.

Mr. **Mahsetky**. Thank you.

I have a few questions and they can be answered by each of you individually or one or however you want to do it. My first question is, how do the five tribes and the Cherokee Nation—well, particularly the five tribes—plan to use their portion of the land? Will it be a joint endeavor or an individual——

Mr. **Chouteau**. How do the five tribes plan to use their portion——

Mr. **Mahsetky**. Their portion once this legislation is passed, enacted.

Mr. CHOUTEAU. We have a—of course we can't do a whole lot until we get the land, but we have discussed the possibility of approaching the State of Oklahoma to contract—now this is for the use of the buildings—approach the State of Oklahoma to enter into a contract for the incarceration of not their hard core prisoners, but those prisoners that are going to be released within a short time, using that as a holding facility and as a training facility for the prisoners.

Several States throughout the country are doing this—they are contracting with private firms—because in our State, the overcrowding of our State prison facilities is getting critical. So, this is one approach that we are considering for the use of the buildings.

Mr. MAHSETKY. Does the Cherokee Nation or the Tonkawa have any specific agreement——

Mr. ALLEN. Ours was mostly considered at the present time anyway. And like I said before, ours is uncertainty on the transfer of these lands, and we were thinking more of a recreational area than developing that.

Mr. MAHSETKY. And it could be done. I mean, with your plan and the individual plan of the other tribes, it still could be done based upon the amount of land.

Mr. CHOUTEAU. Yes.

Mr. MAHSETKY. Has the Bureau consulted—I don't think they have, but I would like it for the record anyway—has the Bureau consulted with you on their proposed recommended amendment, and are you in support of such an amendment?

Mr. WISE. That would be the legislative route to transfer the entire——

Mr. MAHSETKY. Yes.

Mr. WISE. I've been informed of the amendment, and we would support it if that's the most judicious method of transfer. We would support that amendment then.

Mr. CHOUTEAU. We would support that also.

Mr. ALLEN. We will, too.

Mr. MAHSETKY. Thank you. Approximately how many acres of land would the five tribes get in their portion?

Mr. CHOUTEAU. It's around 4,200 acres.

Mr. MAHSETKY. 4,200. That would be divided among the five tribes?

Mr. ALLEN. That would be among the five tribes.

Mr. MAHSETKY. That's all the questions I have. Thank you.

Mr. TAYLOR. I don't have any additional questions today. I would like to make a part of the record a letter dated September 20, 1985, from the regional counsel of the General Services Administration, Disposal Division, dealing with the question of whether these lands could be transferred under the Surplus Property Act.

I would make that a part of the record at this point.

[The letter referred to by Mr. Taylor follows:]

Worth, TX 76102

Stimon
Nancy

September 20, 1985

Regional Counsel (7L)

Chilocco Indian School Reserve--Oklahoma

Disposal Division (7PD)
ATTN: Nancy Pafford

In reply to your letter of September 16, 1985, on the subject matter, I am of the opinion that the Department of Interior has not provided a sufficient certification declaring that the lands are such that meets the requirements for transfer under Pub. L. No. 93-599. For a certification to be sufficient it must certify to facts sufficient to show that the lands within Oklahoma meet the 2 pronged test of Pub. L. No. 93-599.

It would appear that a more basic issue should first be resolved, and such question is: Do these lands come within the definition of property as set forth in 40 U.S.C. 472? I am of the opinion that the reported lands are Public Domain and/or lands withdrawn or reserved from the Public Domain and thus not subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); however, it is recognized that such certain portion containing the school facilities could be found to be not suitable for return to the Public Domain and thus be subject to the Act. I do not think the whole of the 5,824.20 acres could meet such test.

As I read the Report of Excess, it is made conditional on the transfer of such lands to the Secretary of the Interior to be held in trust for the Cherokee Nation of Oklahoma under Pub. L. No. 93-599. The question thus arises as to whether such a report should be accepted (see par. 31c(2) of Chapter 2 of FPRM P 4000.1), since without an appropriate Pub. L. No. 93-599 certification there would be no basis for transfer to the Department of Interior as Trustee.

HOWARD L. HARDEGREE
Deputy Regional Counsel

334-2325

Enclosure

DISPOSAL DIVISION - 7P

Mr. Taylor. And in addition, Mr. Chouteau, you testified about the IMPL funds. I think there may be some problem there. And I would like Ralph Reeser, if he could, to explain to us what that problem is, and how much money is involved.

Mr. Reeser. Mr. Chairman, the fund had been used for the maintenance of the school. But a recent Interior appropriation act enacted the provision in 25 U.S.C. 155(b) to provide that all of the IMPL accounts were to be sorted out as to what portion was really trust money and what portion was not. The portion that was not, as of October 1 of this year, became Federal funds for use under the Snyder Act. And any of those funds not used under the Snyder Act authority by the end of fiscal year 1987 will go back to the Treasury.

Mr. Taylor. How much money was in the IMPL fund?

Mr. Reeser. I understand that the balance is around $50,000, but I'd have to verify that.

Mr. Taylor. OK, we may have a minor followup question just to get clarification on that. Mr. Chouteau, do those comments cause you to want to say anything additional on that point?

Mr. Chouteau. Well, it was our understanding at our Tulsa meeting with the Bureau officials that there was approximately $500,000 in the area IMPL account derived from Chilocco. And it was our understanding also that this—from the BIA officials was that this probably could be transferred over to the six tribes at the time that the land was transferred over.

Now, I understand that the Bureau has taken another—has taken the opposite on this.

Mr. Taylor. We'll seek clarification on this point.

Mr. Chouteau. Right.

Mr. Taylor. I have no further questions, and I think this runs our entire panel of witnesses and all three bills. So, we thank you all—oh, Mr. Wise, did you have a further comment?

Mr. Wise. Yes. Mr. Chairman, I would just like to enter into the record our thanks to Senator Boren and Senator Nickles and their staff who have worked diligently on all this legislation. And we certainly appreciate it, and we appreciate appearing before the committee.

Mr. Taylor. They may have a little further work to do diligently on S. 1724. Thank you all very much. The hearing is adjourned.

[Whereupon, the hearing was adjourned at 11:10 a.m.]

# APPENDIX

Additional Material Submitted for the Record

# W. D. MAYO LOCK & DAM NO. 14 HYDROELECTRIC PROJECT

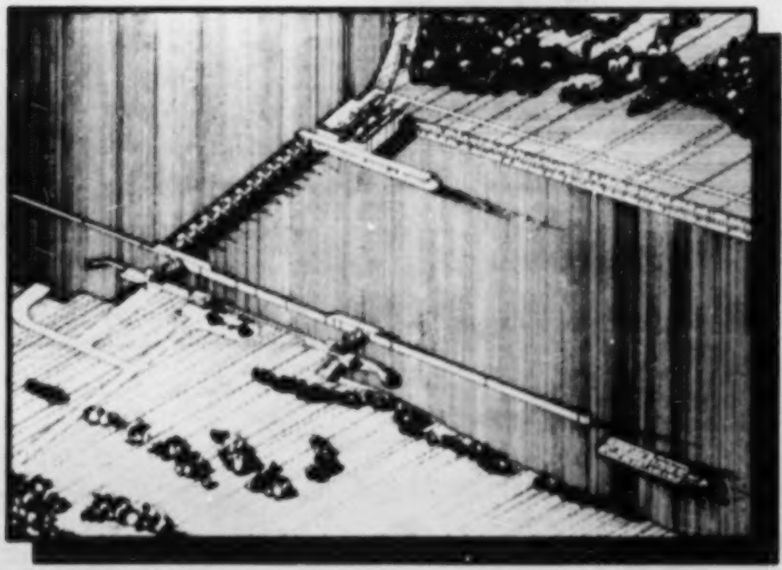
ARKANSAS RIVER, OKLAHOMA

## A PROPOSED NON-FEDERAL/FEDERAL COOPERATIVE DEVELOPMENT

Sept. 6, 1839

CHEROKEE NATION
OF OKLAHOMA

Tahlequah, Oklahoma



## PROPOSED DEVELOPMENT LEGISLATION

Senate and House Bills will authorize the construction of a hydroelectric generating facility at the existing W.D. Mayo Lock & Dam No. 14 on the Arkansas River in Eastern Oklahoma. Under the legislation, the Cherokee Nation will provide financing for the project and subcontract the engineering design and construction. The U.S. Army Corps of Engineers will review and approve the engineering design and construction and own, operate and maintain the completed facility. The Southwestern Power Administration will market the electric power and repay the Cherokee Nation for project design, construction and interest costs, plus a reasonable annual royalty.

The annual royalty will be paid over a period of 50 years and will enhance the economic development and social well being of the Cherokee people.

Sept. 6, 1839

CHEROKEE NATION
OF OKLAHOMA

## PROJECT DATA

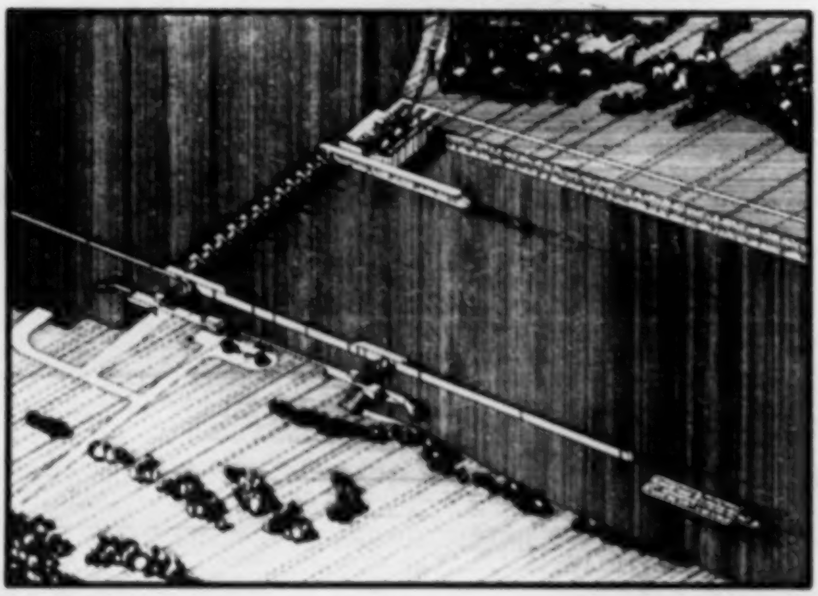
| | |
|---|---|
| • Facility Power Capacity | 33,000 kilowatts |
| • Average Annual Energy Production | 142,000,000 kilowatt Hours |
| • Generator/Turbines | Bulb Turbines |
| * • Engineering & Construction Cost | $70,000,000 |
| • Estimated Project Start | January, 1986 |
| • Estimated Project Completion | March, 1991 |

*Does not include cost of financing and capitalized interest; estimates of private market financing costs range between $12,000,000 for a tax-exempt variable rate to $36,000,000 for a taxable fixed rate.

Sept 6, 1839

# CHEROKEE NATION OF OKLAHOMA

Tahlequah, Oklahoma



# HYDROELECTRIC DEVELOPMENT REPORT

## W. D. MAYO LOCK AND DAM NO. 14

## ARKANSAS RIVER

BENHAM-HOLWAY
POWER GROUP

Manhattan

SOUTHWEST HYDRO ASSOCIATES

# HYDROELECTRIC DEVELOPMENT REPORT
# CHEROKEE NATION OF OKLAHOMA
# W. D. MAYO LOCK AND DAM NO. 14 HYDROELECTRIC PROJECT

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# I - SUMMARY AND CONCLUSIONS

## A. General

The purpose of this study was to determine the expected average annual energy production, dependable capacity and estimated cost for a design/build hydropower installation at the U. S. Army Corps of Engineers' W. D. Mayo Lock and Dam No. 14 on the Arkansas River, Oklahoma. The Cherokee Nation has retained the Tulsa-based firms of the Benham-Holway Power Group and Manhattan Construction Company to prepare this report, design and build the project. This consortium is known as Southwest Hydro Associates. Smith Barney, Harris Upham and Company of New York, New York is assisting in the role as Project Financial Consultant. The lock and dam is presently operated by the Tulsa District of the Corps of Engineers as an integral part of the McClellan-Kerr Navigation System.

## B. Approach to Development

Legislation has been prepared which will authorize the addition of hydroelectric generating facilities at the W. D. Mayo Lock and Dam. The financing, engineering design and construction of the facilities will be accomplished by the Cherokee Nation of Oklahoma. The design and construction will be approved and inspected by the U. S. Army Corps of Engineers. Under the proposed legislation, the Corps of Engineers will own, operate, and maintain the facilities following the completion of construction.

Under the proposed legislation, the Southwestern Power Administration will market the power produced at the facilities in accordance with Section 5 of the 1944 Flood Control Act as amended. Further, the Southwestern Power Administration will be authorized to repay the Cherokee Nation of Oklahoma all of the costs incurred for the design and construction of the facilities directly from revenue resulting from the sale of power. These costs will generally include capital investment, interest on capital investment and a reasonable annual royalty for the design and construction of the facilities not to exceed 50 years in term. The annual operating, maintenance, replacement and marketing expenses incurred after the facilities are operational will be funded through Congressional appropriations and will be repaid by the Southwestern Power Administration to the Treasury from revenues resulting from the sale of power.

## C. Hydropower Alternatives and Cost Estimates

Two design/build alternates for a hydropower installation at W. D. Mayo Lock and Dam No. 14 were studied. One alternate uses three 5.8-meter diameter horizontal-axis pit-type turbines with adjustable wicket gates and adjustable turbine blades. The generators will be high speed, rated at approximately 11,000 kilowatts each, with a speed increaser located between the generator and the runner. The design flow is approximately 9,800 cfs per unit and the gross power head at maximum power production is 17.0 feet.

The second alternate uses four 5.8-meter diameter horizontal-axis pit-type turbines with the same accessories, configuration, ratings and design flow. Gross power head is 15.3 feet.

The estimated constructed cost of the three-unit facility at completion is $70,000,000, and the estimated financing cost ranges between $12,115,000 for a tax exempt variable rate to $36,135,000 for a taxable fixed rate.

The estimated constructed cost of the four-unit facility at completion is $82,000,000, and the estimated financing cost ranges between $14,190,000 for a tax exempt variable rate to $42,325,000 for a taxable fixed rate.

Discussion of estimated project costs and financing options are included under Sections V and VI of this report.

## D. Capacity and Energy

The following estimates of annual energy production and dependable capacity have been developed during this study phase.

### Three-Unit Alternative

| | |
|---|---|
| Average Annual Energy Production | 142,000,000 kWh |
| Dependable Capacity Available at Discharge Equaled or Exceeded 85% of the Time | 15,000 kW |
| Maximum Capacity Available | 33,000 kW |
| Installed Plant Capacity | 33,000 kW |

### Four-Unit Alternative

| | |
|---|---|
| Average Annual Energy Production | 157,000,000 kWh |
| Dependable Capacity Available at Discharge Equaled or Exceeded 85% of the Time | 15,000 kW |
| Maximum Capacity Available | 37,000 kW |
| Installed Plant Capacity | 44,000 kW |

Discussion of Project Power Production is included under Section IV of this report.

## II - INTRODUCTION

### A. General

As a result of the steadily increasing cost of fossil fuels, interest in developing hydroelectric generating facilities has substantially increased over the past several years. Events of the past decade, including rising fuel prices, escalating costs of thermal generating plants and public concern over the safety of nuclear plants, have prompted research of old and new alternative sources of energy. Hydropower utilizes the energy associated with falling water to provide a clean, renewable and inflation-proof energy source.

### B. Purpose of the Study

The purpose of this study was to determine the expected annual energy production, dependable capacity and estimated costs for the design, construction and financing of a hydropower generating facility at W. D. Mayo Lock and Dam No. 14 on the Arkansas River. The project would be cooperatively developed by the Cherokee Nation of Oklahoma and the United States of America. The existing structure is an integral part of the McClellan-Kerr Navigation System. W. D. Mayo Lock and Dam No. 14 will hereafter in this report be noted as L&D 14.

### C. Authority

In April of 1985, the Benham-Holway Power Group and Manhattan Construction Company jointly executed a contract with the Cherokee Nation to provide engineering and construction services for the development of the project. The contract provides for two phases of work. Phase I includes the development of a conceptual project design; project cost estimate for engineering design, construction and financing; average annual energy production estimates; and a project schedule. Phase II includes the design and construction of the project.

This report presents the results of the Phase I work for the proposed hydropower installation and includes the conceptual design, cost estimates, energy estimates, and a project schedule.

## III - SITE CHARACTERISTICS AND EXISTING FACILITIES

### A. General

L&D 14 is located on the Arkansas River in Le Flore and Sequoyah Counties, Oklahoma. The structure is located at Arkansas River Mile 375.0. L&D 14 is an integral part of a series of locks and dams associated with the Arkansas River McClellan-Kerr Navigation System.

During the period from 1960 to 1965, studies by the Federal Power Commission and the Corps of Engineers regarding proposed plans for hydropower development concluded that development of hydroelectric power was not economical under conditions at that time, and inclusion of hydropower development was not recommended. It was stated, however, that several of the navigation projects on the lower Arkansas River basin showed potential for future development and such development could be achieved without modification of the navigation lock and dam projects.

Recent studies conducted by the U. S. Army Corps of Engineers show that hydropower development at L&D 14 would now be feasible when compared to other types of electrical generation. L&D 14 is presently operated for purposes of navigation and recreation.

### B. Geology

The geological information which was gathered in conjunction with the design of L&D 14 by the Corps of Engineers provided sufficient information for the initial structural and foundation investigation for the proposed hydropower project. Additional geological investigations will be required during the detailed design of the project.

### C. Existing Facilities

L&D 14 consists of an earthfill and concrete overflow embankment, a gated spillway and a navigation lock. The spillway section is a straight cohcrete gravity type structure with a crest length of 850 feet. The spillway is controlled by conventional tainter gates, each 21 feet high and 60 feet wide. Between the spillway gates there are thirteen piers, each 10 feet wide, which support the tainter gates. Adjoining the north abutment of the dam is an overflow embankment 1,450 feet long with a crest elevation of 414 feet N.G.V.D. South of the lock is a 900-foot embankment with a crest elevation of 424 feet N.G.V.D. This embankment ties into high ground near the lock and provides the access road to the lock.

## D. History

The construction of L&D 14 was initiated in May 1966, and it was available for navigation in December 1970. The overall construction cost was approximately $32,900,000.

The Arkansas River Project Plan was authorized by the Rivers and Harbors Act of July 24, 1946. House Document No. 758, 79th Congress, 2nd Session, formally presented the Arkansas River Project Plan.

## E. Water Rights

The Arkansas River has its headwaters in the Rocky Mountains of central Colorado. It flows though Kansas, Oklahoma, and Arkansas and into the Mississippi River in Desha County, Arkansas. The project waters are owned by the State of Oklahoma and are subject to appropriation by the Oklahoma Water Resources Board.

The Corps of Engineers developed L&D 14 as a part of the McClellan-Kerr Navigation System for the Arkansas River Basin. The Corps controls the water releases from L&D 14 using the gate structures in the spillway section. During periods of high flow in the Arkansas River, the navigation pool will be maintained until such time as the water released through the spillway gates exceeds the capacity of the spillway. Once this capacity has been exceeded, Pool No. 14 will begin to rise and eventually overtop the overflow sections of the embankment. As the floodwaters recede, the normal pool elevation will again be maintained for navigation purposes.

The primary purpose of L&D 14 is to create the navigation pool to Robert S. Kerr Lock and Dam (No. 15), approximately 20 miles upstream.

## F. Land Rights

The land rights for the bed and banks of the Arkansas River are held in title by the Cherokee, Choctaw and Chickasaw Indian tribes. This title claim was affirmed by the United States Supreme Court on April 27, 1970. The Jurisdiction Act of December 23, 1982 (Public Law 97-385, 97th Congress), authorized the Cherokee Nation to negotiate final claims with the United States.

## IV - SITE HYDROLOGY AND PROJECT POWER PRODUCTION

### A. General

The Arkansas River has historically experienced large fluctuations in flow. The flood of record in May, 1943 yielded a flow of 536,000 cubic feet per second. The watershed within the reach from Little Rock, Arkansas, to the Mississippi River is narrow, and rainfall in this area does not significantly modify river flows. Upstream from Little Rock the watershed becomes broader. Numerous flood control reservoirs situated on the major tributaries in Western Arkansas and Oklahoma have reduced the effects of flooding in recent years.

Hydrological data used in this study were taken from project design memoranda, drawings and reports provided by the Tulsa District Corps of Engineers and water discharge records from the U. S. Geological Survey.

### B. Hydrology

Flow data for the Arkansas River has been accumulated by the U.S. Geological Survey for a period of record of 1927 through 1979. A continuous recording gauge (No. 07250550) is located at Van Buren, Arkansas. Flow data used for hydropower calculations were taken from the output of the Corps of Engineers SWD "Super" Run Number 79-35. This program modifies historical daily flows recorded prior to construction of the navigation system to show the flows, if regulation had been present. "Super" is the reservoir regulation simulation computer program developed by the Southwestern Division of the Corps of Engineers used to model the McClellan-Kerr Arkansas River Navigation System. The hydrologic period of record for this simulation is January 1940 through December 1974, and a flow duration curve representing this period of record is included as Exhibit 1. Headwater and tailwater rating curves are included as Exhibit 2 in this section.

Based on investigations by the Corps of Engineers at similar projects on the McClellan-Kerr Navigation System, it was determined that leakage and lockage losses of water were minimal compared to design flows for turbine operation. Upon completion of the hydropower project at L&D 14, it is recommended that the seals on the spillway gates receive periodic inspection to eliminate unnecessary losses of water which may be used in generating hydropower during low flow periods.

## C. Hydraulics

The proposed hydropower project at L&D 14 would be a "run-of-river" installation and would not alter the present operation of the river, nor would it require storage capabilities in Pool No. 14.

During periods of low flow, additional capacity could be made available by a "pooling" operation of Pool 14 with the upstream fluctuation in pool levels not greater than present operational limits. Since this would require a slight modification of river operation for the Corps of Engineers, the increased dependable capacity has been presented for information only for this study. Additional capacity would also be available during peak demand periods if coincident releases could be made at L&D 14 with the peaking generation releases at Robert S. Kerr powerhouse.

Because of the small amount of operational flexibility in Pool 14, the proposed project will be sensitive to short term flow variations. Flows too small for power production occur about 19 percent of the time, based on an analysis of hourly flow records. These low flows are due to peaking operations at Robert S. Kerr power plant, upstream. Operations at L&D 15 may reduce power production by forcing spillage at times, even though average weekly flows are below the hydraulic capacity of the proposed turbine. Conversely, some power production is possible at L&D 14 when weekly average flows are high, indicating that generation is normally restricted by high tailwater resulting in a loss of power head.

The navigation project designed by the Corps of Engineers at L&D 14 on the Arkansas River does not include provisions for a hydropower facility. The Corps of Engineers recently performed a feasibility study for installing hydropower at L&D 14, and the results of their study show hydropower generation to be feasible. The proposed hydropower facility being studied in this report would be located adjacent to the north abutment of the existing dam. Prior to final design of the project, detailed model studies would be performed to assist in evaluating the hydraulics of the proposed installation at the site. The following hydraulic design data have been established for preliminary conceptual design of the powerhouse facilities at L&D 14.

### HYDRAULIC DESIGN DATA

| | |
|---|---|
| Reservoir Elevation (feet, N.G.V.D.): | |
| - Top of overflow embankment | 414.0 |
| - Top of access road embankment | 424.0 |
| - Ultimate design pool | 445.0 |
| - Spillway crest | 392.0 |
| - Top navigation pool | 412.0 |
| - Modified standard project flood | 445.0 |
| Tailwater Elevation (feet, N.G.V.D.): | |
| - Maximum (for locking operations) | 417.0 |
| - Normal | 392.0 |
| - Minimum | 391.0 |
| Normal Gross Head (feet): | 20 |
| Minimum Flow (cfs): | 0 |

The gross head curve, corresponding to the respective flows, is also shown on Exhibit 1.

## D. Study Methodology - Power Production

A number of factors affect the power production capabilities of a hydropower generating facility. These factors include available head and flow, turbine operating efficiency and generator efficiency. The available head is the difference in elevation between the headwater and tailwater less an allowance for trash rack and inlet and outlet losses. During periods of high flow, the tailwater elevation rises due to the build-up of water in the tailrace outlet downstream from the dam, decreasing the available head and thus reducing power production capability. During extremely high flow conditions or prior to impending floods on the Arkansas River, the available head for power production will be reduced below the minimum practical operating point of the turbines.

The derivation of the flow duration curves is described earlier in this report. Flow duration curves, available hourly gate records, available head at each flow, preliminary turbine efficiency data and a proposed operating table were developed for each of the alternatives. The operation table was submitted to several leading manufacturers of turbine-generator equipment. The manufacturers provided estimates of energy, capacity and preliminary cost for the equipment. These estimates for energy and capacity are equivalent to figures which would be offered as guarantees by equipment manufacturers in a future executed purchase contract.

The objective of the power production studies was to determine a reasonable estimate of average annual power production at L&D 14 by simulating historical flow data and converting the available potential energy to electrical energy production. Using the historical flow records modified to reflect present-day Corps of Engineers' regulation procedures, annual power production was determined for different flow conditions.

The available head used for the power duration curves includes the gross head less an allowance for losses through the intake and the draft tube outlet. This study considers a run-of-river hydropower project, which uses the water for power production that otherwise would be discharged through the spillway. The Corps of Engineers does not own sufficient lands adjacent to Pool No. 14 to permit a power storage operation at L&D 14.

Judicious use of the fluctuations in Pool No. 14 equivalent to the variations in present-day Corps of Engineers operations for navigation purposes would result in increased dependable capacity during periods of minimal flow. If power releases through L&D 14 powerhouse were equivalent and coincident to releases from Robert S. Kerr, additional dependable capacity would also be available.

## E. Study Results

Power production was estimated for 3-unit and 4-unit powerhouse arrangements at L&D 14. In both cases, the units were identical 5.8-meter diameter turbines, with pit-type generator designs. The estimates of annual energy production for an "average" water flow year and the associated data base are discussed below.

"Average" Hydropower Year For the purposes of hydropower planning and engineering, a commonly used standard of reference is the "average" hydropower year. It is a measure of central tendency. This is the power produced in a theoretical year arrived at by summing the annual power produced in kilowatt-hours over a period of several years and then dividing that sum by the number of years. The power produced in such a theoretical year would, therefore, be the same as the average produced in all of the years in the period considered. In a specific case, if the kilowatt-hours of power produced in each of several years are known, then the calculation of an "average" hydropower year is relatively simple. In the planning of future hydropower projects, however, it is necessary to theoretically operate future generating facilities over a period of several years when subjected to historical flows and corresponding pool elevations. In order to determine the power which would have been produced in any one of the years in the period studied, it is necessary to develop flow-duration and head-duration curves for that particular year and, from those curves, to develop an operation table for the same year. The operation table determines the power which could be produced by using the available flows and heads within the operating range of the proposed hydroelectric equipment and by applying the corresponding equipment efficiencies. From these curves, the power which might have been generated during that particular year can be calculated, and then such power for all the years of the period would be summed in order to calculate the energy in an "average" hydropower year.

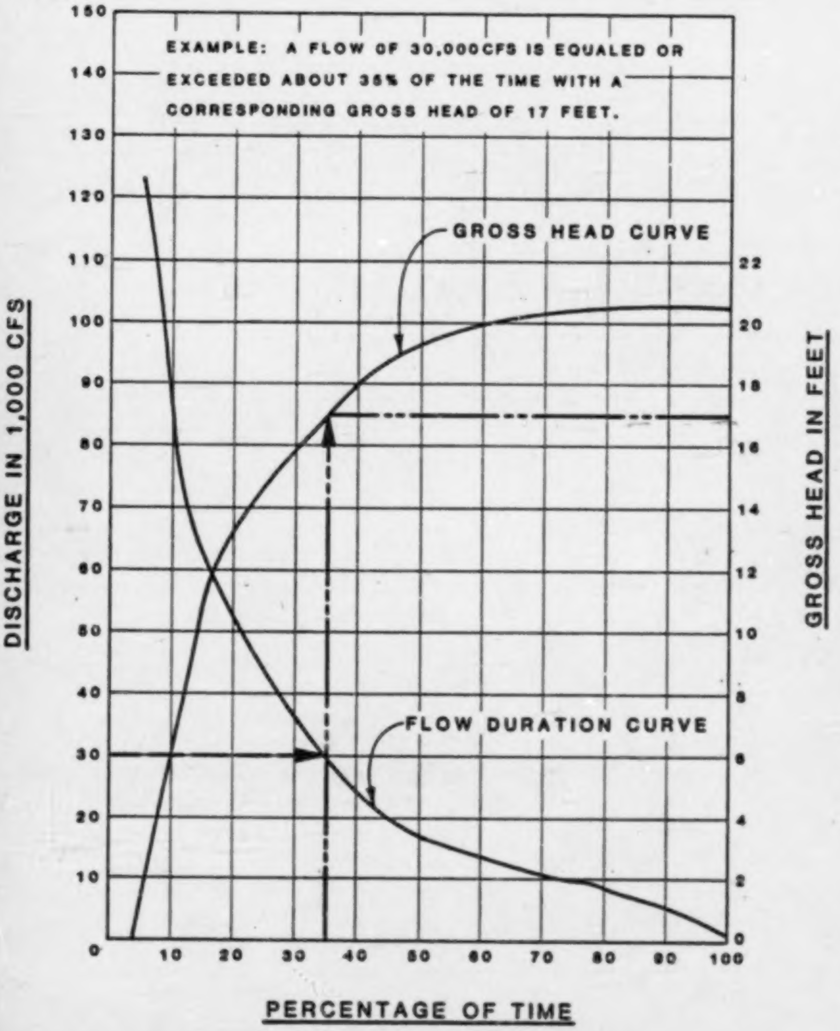
The Corps of Engineers has formulated a computer program which will calculate a single equivalent flow-duration curve for a period of years. The Corps has calculated such a curve for the Van Buren gauge for the period of 1940 through 1974, and that curve was adopted for this investigation. Using headwater and tailwater rating curves at L&D 14, the companion head duration curve was calculated. Using both curves and corresponding hourly gate records, an operation table was calculated for the same period of years assuming the proposed generating units had been in place. This curve was the basis for calculation of the estimated annual energy production in an "average" hydropower year. Using this technique, the estimated annual energy production during an "average" hydropower year for three 5.8-meter turbines was determined to be 142,000,000 kilowatt-hours and, for four similar units, was 157,000,000 kilowatt-hours. The "average" hydropower year is a standard of reference. Extremes in availability of water for power generation will occur and will be discussed in a later paragraph.

Capacity The dependable capacity for a run-of-river operation, which includes peaking releases from upstream Robert S. Kerr Dam, is 15,000 kilowatts for the 3-unit powerhouse. The maximum plant capacity for this alternate is approximately 33,000 kilowatts.

The dependable capacity for a run-of-river operation, which includes peaking releases from upstream Robert S. Kerr Dam, is 15,000 kilowatts for the 4-unit powerhouse. The maximum plant capacity for this alternate is approximately 37,000 kilowatts.

For both the 3-unit and 4-unit schemes, dependable capacity is the capacity that would be available at least 85% of the time during an average hydropower year.

Discussion At most low head hydroelectric installations, an examination of the estimated annual energy production shows that more energy can be expected in a hydropower year with low flows than can be expected in a hydropower year with very high flows. This appears to be a contradiction in terms, but such is not the case for low-head hydroelectric installations where changes in available head resulting from changes in flow represent a large percentage of the design head. As previously discussed, the available head for energy production is the difference between headwater elevation and tailwater elevation. As river flows increase, the tailwater elevation rises faster than the headwater elevation, the net available head decreases and, therefore, the energy available also decreases. When the net available head decreases to less than that necessary for machine operation, there may be long periods during which no power can be generated. Thus, in most cases, more power can be generated in a hydropower year with low flows than in a hydropower year with very high flows.



NOTE: PERIOD OF RECORD JANUARY 1940 THROUGH DECEMBER 1974

SOUTHWEST HYDRO ASSOCIATES

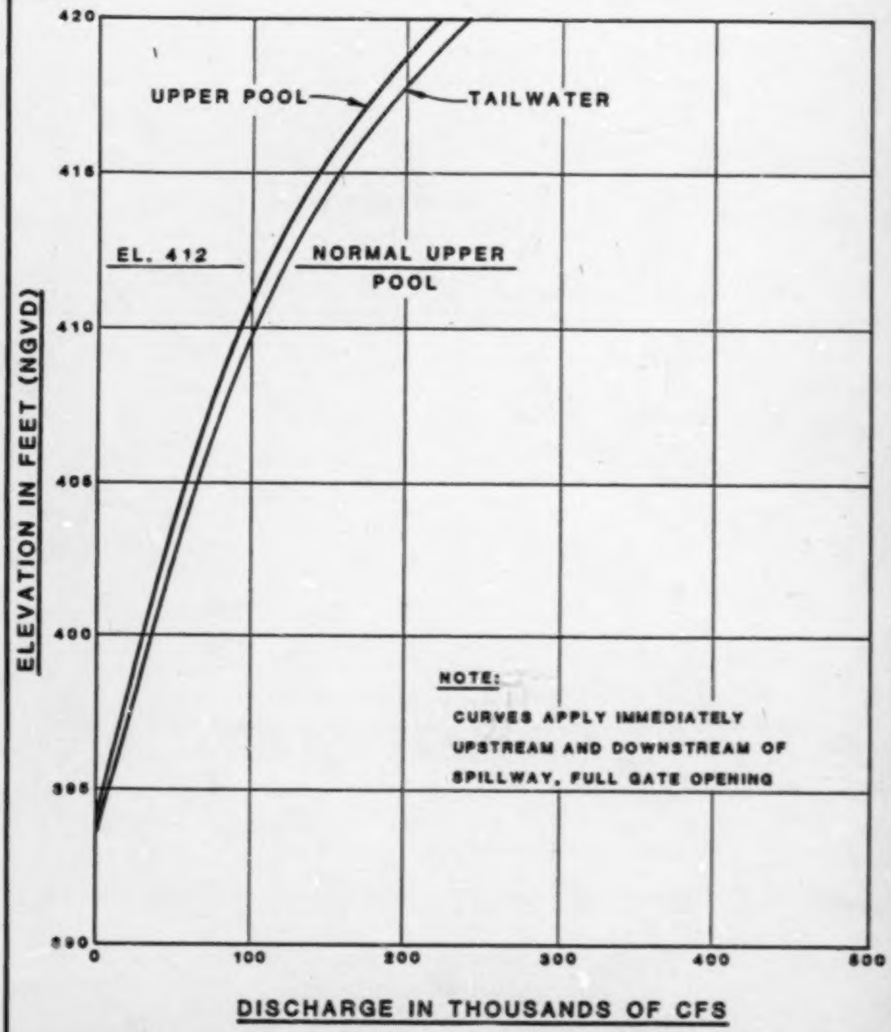
CHEROKEE NATION OF OKLAHOMA

W.D. MAYO FEASIBILITY STUDY
LOCK AND DAM NO. 14
ANNUAL DURATION CURVES

SCALE NONE

DWG NO 11-85-002-00 G018

REV 0



NOTE:

CURVES APPLY IMMEDIATELY UPSTREAM AND DOWNSTREAM OF SPILLWAY, FULL GATE OPENING

SOUTHWEST HYDRO ASSOCIATES

CHEROKEE NATION
OF OKLAHOMA

W.D. MAYO FEASIBILITY STUDY
LOCK AND DAM NO. 14
RATING CURVES

SCALE: NONE

11-86-002-00
G019

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## V - PROJECT COSTS AND DEVELOPMENT SCHEDULE

### A. General

Exhibits 3 and 4 of this section list the total estimated project costs, including financing through construction, for three- and four-unit installations. In addition, the annual estimated debt service requirements are set forth as a line item below the total estimated cost of each proposed financing option.

### B. Components of Direct Cost

The principal cost components for the L&D 14 hydropower project include procurement and installation/construction of turbine-generator equipment, civil works, electrical and mechanical systems. The civil works include the powerhouse structure and appurtenances, construction of the headrace and tailrace channels, and various temporary and permanent site improvements. The electrical systems include all electrical equipment necessary for operation and control of the turbine-generator equipment, transformers, switchyards, transmission lines and associated controls. The mechanical systems include drainage and dewatering systems, a compressed air system, fire protection, HVAC, plumbing and the powerhouse crane.

The conceptual design drawings developed for analysis of the various alternatives show the major features included in the project costs. The drawings are included in Section VII of this report. Detailed quantity takeoffs were prepared for all portions of the project.

Manufacturers who have supplied technical information and data for the turbine-generator equipment and large transformers have also provided "firm" cost estimates. The cost for procurement and installation of the balance of plant equipment required for the hydropower facility has been estimated based on recently constructed and recently bid projects and information from various equipment suppliers and installation subcontractors.

Cost for necessary construction works and equipment, plant architectural and site work, finishes, spare parts, engineering design, model tests, environmental work, administration, construction supervision, testing and startup, bonds, insurance, escalation and construction contingency have been included in the total project capital cost estimate.

## C. Annual Costs

The annual costs associated with a hydropower project include debt service, operation and maintenance costs, administrative costs, replacement costs, rents and royalties.

Debt service includes the annual payments required to retire bonds or loans used to finance the capital costs of the project. Annual operation and maintenance costs include personnel, equipment and materials necessary to operate and maintain the facilities.

With the exception of debt service requirements, no attempt has been made to set forth any estimated annual costs as a part of this report.

## D. Development Schedule

Exhibit 5 shows the estimated time schedule for developing a 3-unit or 4-unit installation at L&D 14. The schedule encompasses the complete development of the project from preparation of the legislative bill authorizing the project to commercial operation of all units. The conceptual project schedule assumes legislative authorization in late 1985.

In order to minimize the total time duration of the project and subsequently reduce the estimated cost of capitalized interest, project planning has been developed employing a "fast track" scheduling approach. Fast track scheduling is a method of coordinating project design and construction so that design stays just a step ahead of construction and effectively reduces the total time required by overlapping the two activities.

Fast track engineering and construction scheduling will make it possible for the project to be completed in the shortest amount of time. The design/build development arrangement is well suited to take full advantage of fast track techniques. Providing that all interfacing parties furnish timely review and approval of design and construction, it is estimated that approximately one year may be saved from the time required for a conventional scheduling approach to project development.

9/85 CHEROKEE NATION OF OKLAHOMA EXHIBIT 3

Lock and Dam No. 14 Hydroelectric Project

SUMMARY COST ESTIMATES

| THREE-UNIT INSTALLATION | | Estimated Cost |
|---|---|---|
| Direct Cost | | at Completion |
| o Plant Engineering, Design, Construction and Miscellaneous Equipment | | $ 54,366,000 |
| o Turbine-Generators and Auxiliary Equipment with Installation | | 13,734,000 |
| o Generator Transformers | | 900,000 |
| o Corps of Engineers Design Review and Construction Inspection | | 1,000,000 |
| TOTAL ESTIMATED DIRECT COST | | $ 70,000,000 |
| Financing Cost - Case No. 1: Tax Exempt Variable Rate (7-1/2%) | | |
| o Underwriter's Discount | | $ 2,463,450 |
| o Capitalized Interest | | 21,815,145 |
| o Construction Fund Interest Earnings | | (12,163,595) |
| Total Estimated Financing Cost | | $ 12,115,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 1) | | $ 82,115,000 |
| Annual Debt Service | $ 7,886,000 | |
| Financing Cost - Case No. 2: Tax Exempt Mixed Rate (7-1/2%/9-3/8%) | | |
| o Underwriter's Discount | | $ 2,463,450 |
| o Capitalized Interest | | 21,815,145 |
| o Construction Fund Interest Earnings | | (12,163,595) |
| Total Estimated Financing Cost | | $ 12,115,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 2) | | $ 82,115,000 |
| Annual Debt Service | $ 8,877,000 | |
| Financing Cost - Case No. 3: Tax Exempt Fixed Rate (9-3/8%) | | |
| o Underwriter's Discount | | $ 2,694,300 |
| o Capitalized Interest | | 29,279,295 |
| o Construction Fund Interest Earnings | | (12,163,595) |
| Total Estimated Financing Cost | | $ 19,810,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 3) | | $ 89,810,000 |
| Annual Debt Service | $ 9,877,000 | |
| Financing Cost - Case No. 4: Taxable Fixed Rate (12%) | | |
| o Underwriter's Discount | | $ 3,184,050 |
| o Capitalized Interest | | 45,114,545 |
| o Construction Fund Interest Earnings | | (12,163,595) |
| Total Estimated Financing Cost | | $ 36,135,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 4) | | $106,135,000 |
| Annual Debt Service | $ 14,035,000 | |

9/85 **CHEROKEE NATION OF OKLAHOMA** EXHIBIT 4

Lock and Dam No. 14 Hydroelectric Project

SUMMARY COST ESTIMATES

| FOUR-UNIT INSTALLATION<br>Direct Cost | | Estimated Cost at Completion |
|---|---|---|
| o Plant Engineering, Design, Construction and Miscellaneous Equipment | | $ 62,480,000 |
| o Turbine-Generators and Auxiliary Equipment with Installation | | 17,320,000 |
| o Generator Transformers | | 1,200,000 |
| o Corps of Engineers Design Review and Construction Inspection | | 1,000,000 |
| TOTAL ESTIMATED DIRECT COST | | $ 82,000,000 |
| Financing Cost - Case No. 1: Tax Exempt Variable Rate (7-1/2%) | | |
| o Underwriter's Discount | | $ 2,885,700 |
| o Capitalized Interest | | 25,553,082 |
| o Construction Fund Interest Earnings | | (14,248,782) |
| Total Estimated Financing Cost | | $ 14,190,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 1) | | $ 96,190,000 |
| Annual Debt Service | $ 9,237,000 | |
| Financing Cost - Case No. 2: Tax Exempt Mixed Rate (7-1/2%/9-3/8%) | | |
| o Underwriter's Discount | | $ 2,885,700 |
| o Capitalized Interest | | 25,553,082 |
| o Construction Fund Interest Earnings | | (14,248,782) |
| Total Estimated Financing Cost | | $ 14,190,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 2) | | $ 96,190,000 |
| Annual Debt Service | $ 10,399,000 | |
| Financing Cost - Case No. 3: Tax Exempt Fixed Rate (9-3/8%) | | |
| o Underwriter's Discount | | $ 3,156,150 |
| o Capitalized Interest | | 34,297,632 |
| o Construction Fund Interest Earnings | | (14,248,782) |
| Total Estimated Financing Cost | | $ 23,205,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 3) | | $105,205,000 |
| Annual Debt Service | $ 11,570,000 | |
| Financing Cost - Case No. 4: Taxable Fixed Rate (12%) | | |
| o Underwriter's Discount | | $ 3,729,750 |
| o Capitalized Interest | | 52,844,032 |
| o Construction Fund Interest Earnings | | (14,248,782) |
| Total Estimated Financing Cost | | $ 42,325,000 |
| TOTAL ESTIMATED PROJECT COST (CASE NO. 4) | | $124,325,000 |
| Annual Debt Service | $ 16,440,000 | |

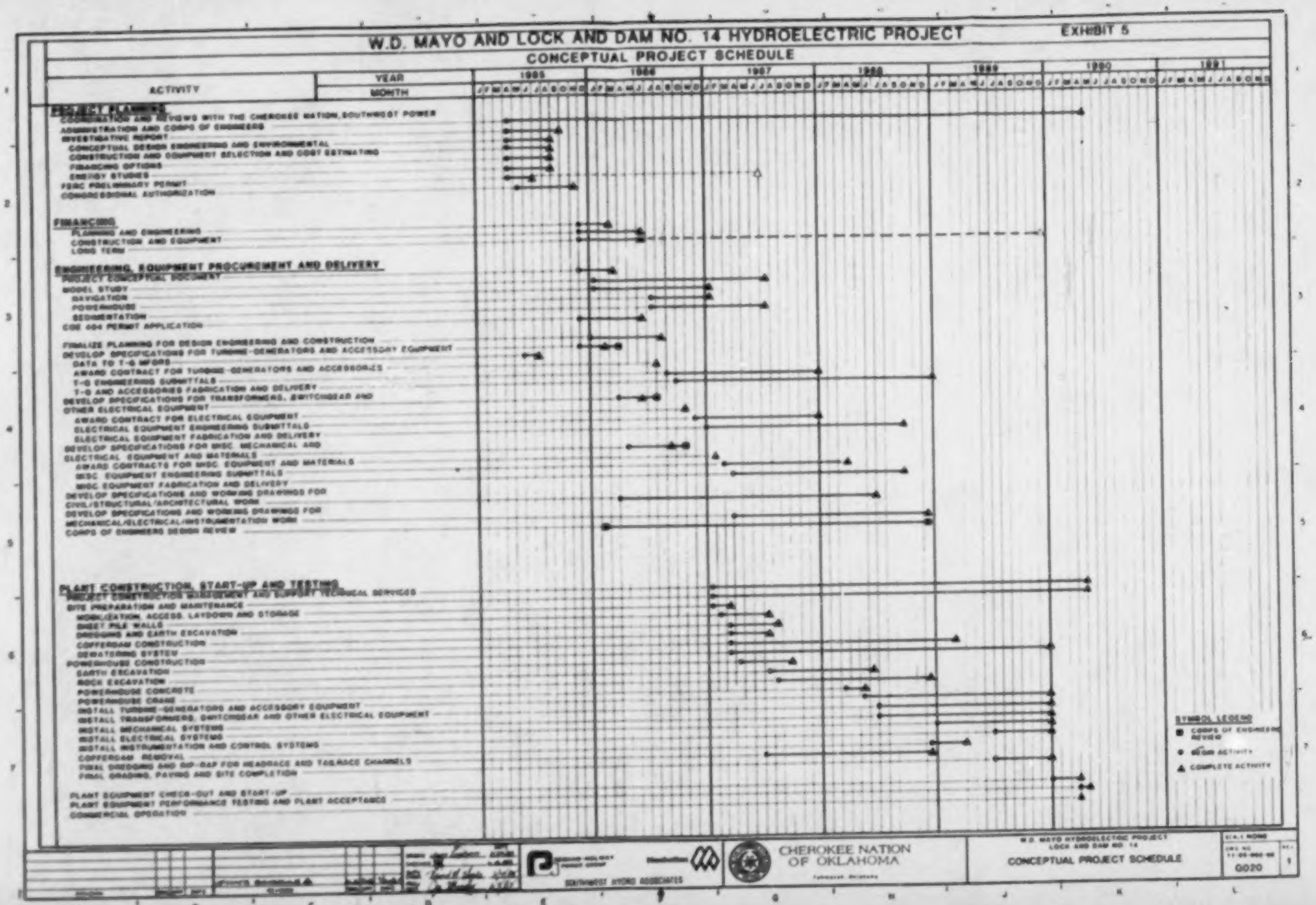


EXHIBIT 5

W.D. MAYO AND LOCK AND DAM NO. 14 HYDROELECTRIC PROJECT

CONCEPTUAL PROJECT SCHEDULE

## VI - PROJECT FINANCING ALTERNATIVES

### A. General

The total estimated project costs and annual debt service requirements, set forth as Exhibits 3 and 4 under Section V of this report, were developed using the following four financing alternatives and interest rates.

- Tax Exempt Variable Rate - 7-1/2%
- Tax Exempt Mixed Rate - 7-1/2%/9-3/8%
- Tax Exempt Fixed Rate - 9-3/8%
- Taxable Fixed Rate - 12%

Construction cash flow requirements, set forth as Exhibit 6 of this section, were computed using the total estimated direct cost of construction in conjunction with the proposed "fast track" project schedule. Following computation of construction cash flow, tables for construction drawdown, capitalized interest and sources and uses of funds were developed in order to arrive at the total estimated project cost and debt service schedule.

### B. Options

Each financing alternative is based on a 25-year debt issue, which includes the construction period and assumes the first full year of plant operation to be 1991. Projected interest rates used under each financing scheme are representative of speculative estimates of the state of financial markets in January 1986. No attempt was made to skew debt service to meet any particular project revenue projections or goals.

- Tax Exempt Variable Rate

This alternative assumes tax exempt status is achieved and an adjustable interest rate is in effect through the construction and debt repayment periods.

o Tax Exempt Mixed Rate

This alternative assumes tax exempt status is achieved and an adjustable interest rate is in effect through the end of the construction period. When the project is completed, the variable rate structure is converted to long-term fixed rate bonds maturing in approximately 20 years. This scheme allows for minimizing interest during construction and locking in a long-term interest rate so that debt service may be fixed once project revenues begin to flow.

Variable rate structures are particularly applicable to hydroelectric projects of this nature for the following reasons:

- The issuer can minimize interest during construction by borrowing the amount of capitalized interest at a much lower rate.
- The variable interest rate risk during the construction period can be provided for by using conservative assumptions.
- The risk of a prolonged construction period for a project of this type is minimal.
- The project output and revenue stream produced is predictable within an acceptable range.

o Tax Exempt Fixed Rate

This alternative assumes tax exempt status is achieved and a fixed interest rate is in effect through the construction period and debt service cycle of the project.

o Taxable Fixed Rate

This alternative assumes tax exempt status is not achieved and a fixed interest rate is in effect through the construction period and debt service cycle of the project. Additional taxable debt structures may be prepared and analyzed should it be necessary.

- Taxable Fixed Rate

This alternative assumes tax exempt status is not achieved and a fixed interest rate is in effect through the construction period and debt service cycle of the project. Additional taxable debt structures may be prepared and analyzed should it be necessary.

Exhibit 6

## CHEROKEE NATION OF OKLAHOMA
## W. D. MAYO LOCK AND DAM NO. 14 HYDROELECTRIC PROJECT
## ESTIMATED CASH FLOW REQUIREMENTS

Three Units - Estimated Cost $70,000,000

| | Quarterly | (Thousand $) | Cumulative | |
|---|---|---|---|---|
| 1986 | | | | |
| 1st Quarter | $ 630 | | $ 630 | |
| 2nd Quarter | 630 | | 1,260 | |
| 3rd Quarter | 1,680 | | 2,940 | |
| 4th Quarter | 1,680 | | 4,620 | |
| Total | | $ 4,620 | | $ 4,620 |
| 1987 | | | | |
| 1st Quarter | $ 3,745 | | $ 8,365 | |
| 2nd Quarter | 3,745 | | 12,110 | |
| 3rd Quarter | 3,010 | | 15,120 | |
| 4th Quarter | 3,010 | | 18,130 | |
| Total | | $13,510 | | $18,130 |
| 1988 | | | | |
| 1st Quarter | $ 5,040 | | $23,170 | |
| 2nd Quarter | 5,040 | | 28,210 | |
| 3rd Quarter | 9,310 | | 37,520 | |
| 4th Quarter | 9,310 | | 46,830 | |
| Total | | $28,700 | | $46,830 |
| 1989 | | | | |
| 1st Quarter | $ 5,075 | | $51,905 | |
| 2nd Quarter | 5,075 | | 56,980 | |
| 3rd Quarter | 3,080 | | 60,060 | |
| 4th Quarter | 3,080 | | 63,140 | |
| Total | | $16,310 | | $63,140 |
| 1990 | | | | |
| 1st Quarter | $ 3,430 | | $66,570 | |
| 2nd Quarter | 3,430 | | 70,000 | |
| Total | | $ 6,860 | | $70,000 |

August 21, 1985

Exhibit 6

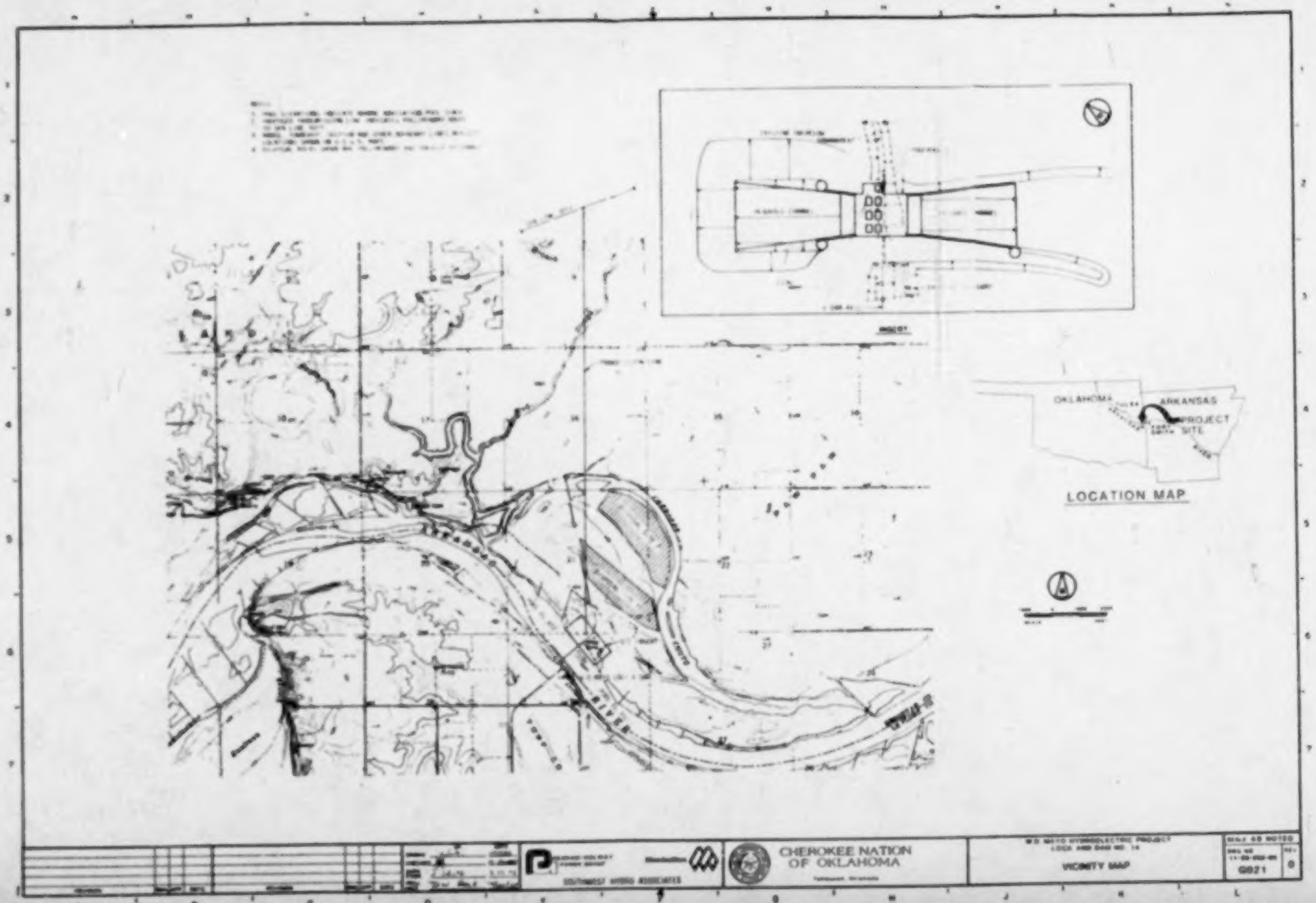
## CHEROKEE NATION OF OKLAHOMA
## W. D. MAYO LOCK AND DAM NO. 14 HYDROELECTRIC PROJECT

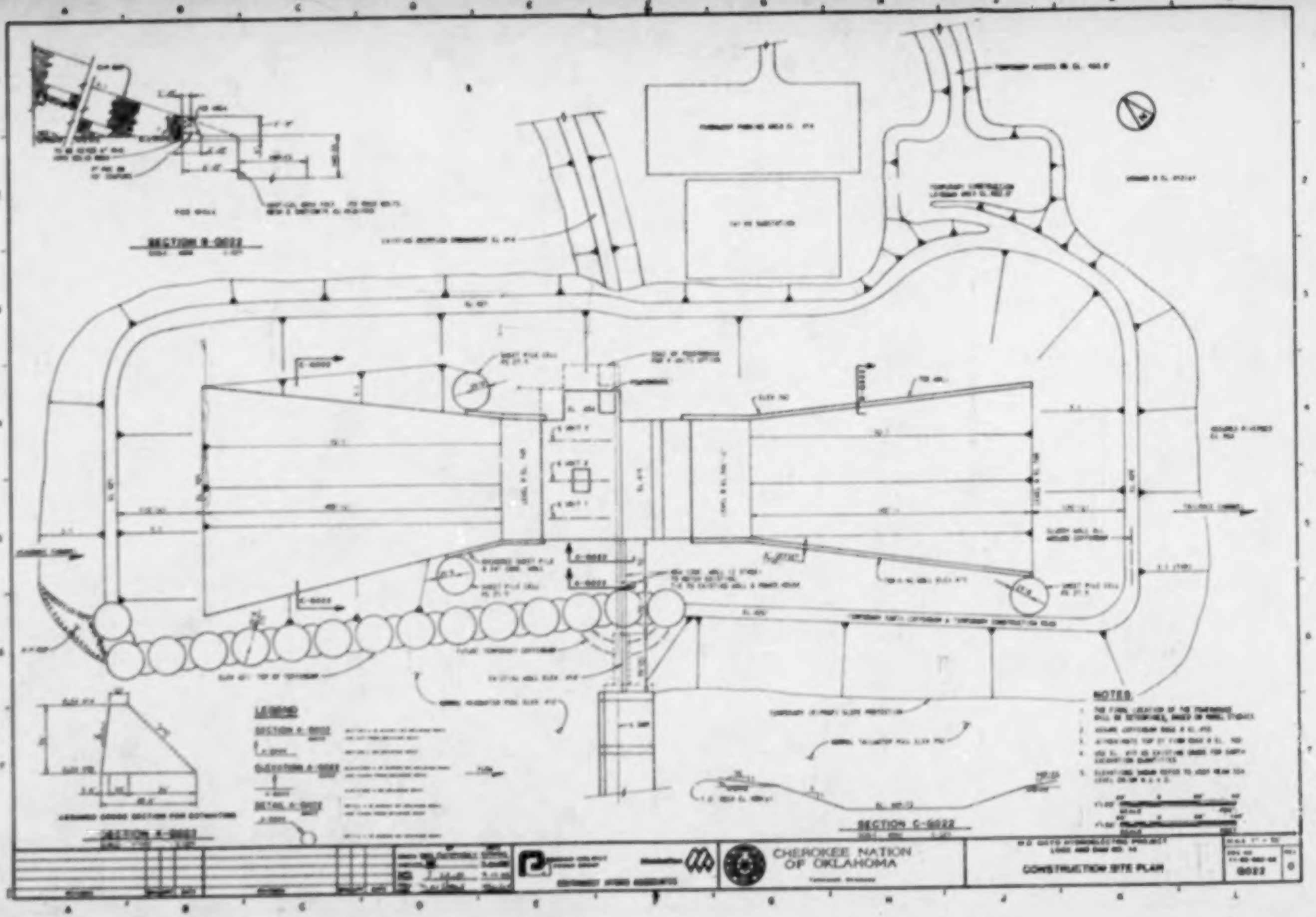
## ESTIMATED CASH FLOW REQUIREMENTS

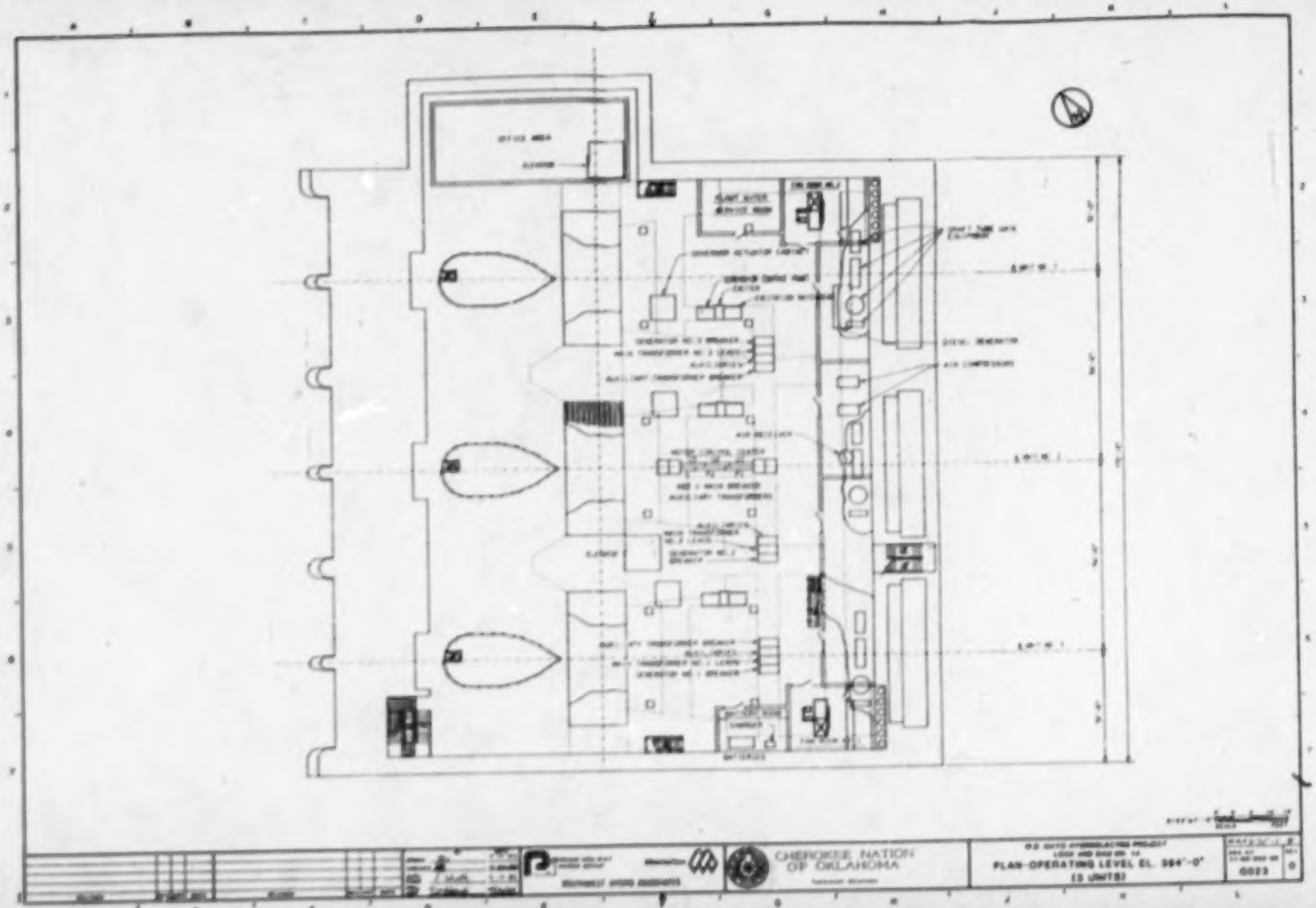
Four Units - Estimated Cost $82,000,000

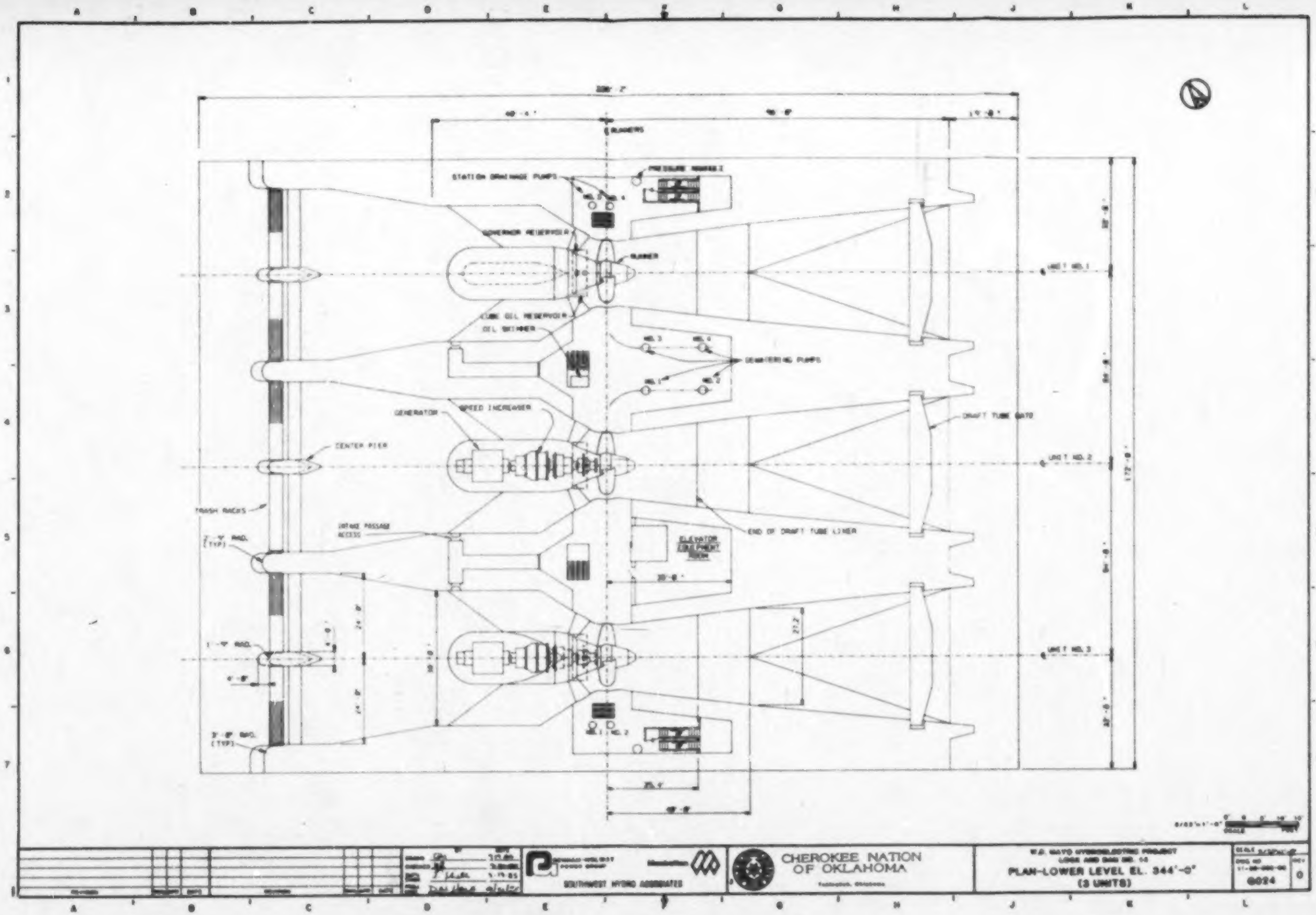
| 1986 | Quarterly | (Thousand $) | Cumulative | |
|---|---|---|---|---|
| 1st Quarter | $ 738 | | $ 738 | |
| 2nd Quarter | 738 | | 1,476 | |
| 3rd Quarter | 1,968 | | 3,444 | |
| 4th Quarter | 1,968 | | 5,412 | |
| Total | | $ 5,412 | | $ 5,412 |
| 1987 | | | | |
| 1st Quarter | $ 4,387 | | $ 9,799 | |
| 2nd Quarter | 4,387 | | 14,186 | |
| 3rd Quarter | 3,526 | | 17,712 | |
| 4th Quarter | 3,526 | | 21,238 | |
| Total | | $15,826 | | $21,238 |
| 1988 | | | | |
| 1st Quarter | $ 5,904 | | $27,142 | |
| 2nd Quarter | 5,904 | | 33,046 | |
| 3rd Quarter | 10,906 | | 43,952 | |
| 4th Quarter | 10,906 | | 54,858 | |
| Total | | $33,620 | | $54,858 |
| 1989 | | | | |
| 1st Quarter | $ 5,945 | | $60,803 | |
| 2nd Quarter | 5,945 | | 66,748 | |
| 3rd Quarter | 3,608 | | 70,356 | |
| 4th Quarter | 3,608 | | 73,964 | |
| Total | | $19,106 | | $73,964 |
| 1990 | | | | |
| 1st Quarter | $ 4,018 | | $77,982 | |
| 2nd Quarter | 4,018 | | 82,000 | |
| Total | | $ 8,036 | | $82,000 |

August 21, 1985


LOCATION MAP
OKLAHOMA
ARKANSAS
PROJECT SITE
ARKANSAS RIVER
CHEROKEE NATION OF OKLAHOMA
SOUTHWEST HYDRO ASSOCIATES
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
VICINITY MAP
G021
0


SECTION B-G022
NOTES
LEGEND
SECTION A-G022
SECTION C-G022
CHEROKEE NATION
OF OKLAHOMA
CONSTRUCTION SITE PLAN
G022


OFFICE AREA
ELEVATOR
PLANT OUTER SERVICE ROOM
GOVERNOR ACTUATOR CABINET
DRAFT TUBE GATE EQUIPMENT
DIESEL GENERATOR
AIR COMPRESSORS
AIR RECEIVER
MOTOR CONTROL CENTER
GENERATOR NO. 2 BREAKER
AUXILIARY TRANSFORMER BREAKER
GENERATOR NO. 1 BREAKER
BATTERIES
CHARGER
CHEROKEE NATION OF OKLAHOMA
PLAN-OPERATING LEVEL EL. 394'-0"
(3 UNITS)
0023
0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PRESSURE WASHER
NO. 3
NO. 4
GOVERNOR RESERVOIR
RUNNER
LUBE OIL RESERVOIR
OIL SKIMMER
DEWATERING PUMPS
NO. 1
NO. 2
GENERATOR
SPEED INCREASER
CENTER PIER
DRAFT TUBE GATE
UNIT NO. 1
UNIT NO. 2
UNIT NO. 3
TRASH RACKS
INTAKE PASSAGE ACCESS
ELEVATOR EQUIPMENT ROOM
END OF DRAFT TUBE LINER
℄ RUNNERS
7'-9" RAD. (TYP)
1'-9" RAD.
3'-9" RAD. (TYP)
172'-0"
40'-4"
96'-8"
17'-8"
30'-0"
25.4'
48'-8"
27.2
SCALE
FEET
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
PLAN-LOWER LEVEL EL. 344'-0"
(3 UNITS)
CHEROKEE NATION OF OKLAHOMA
SOUTHWEST HYDRO ASSOCIATES
G024
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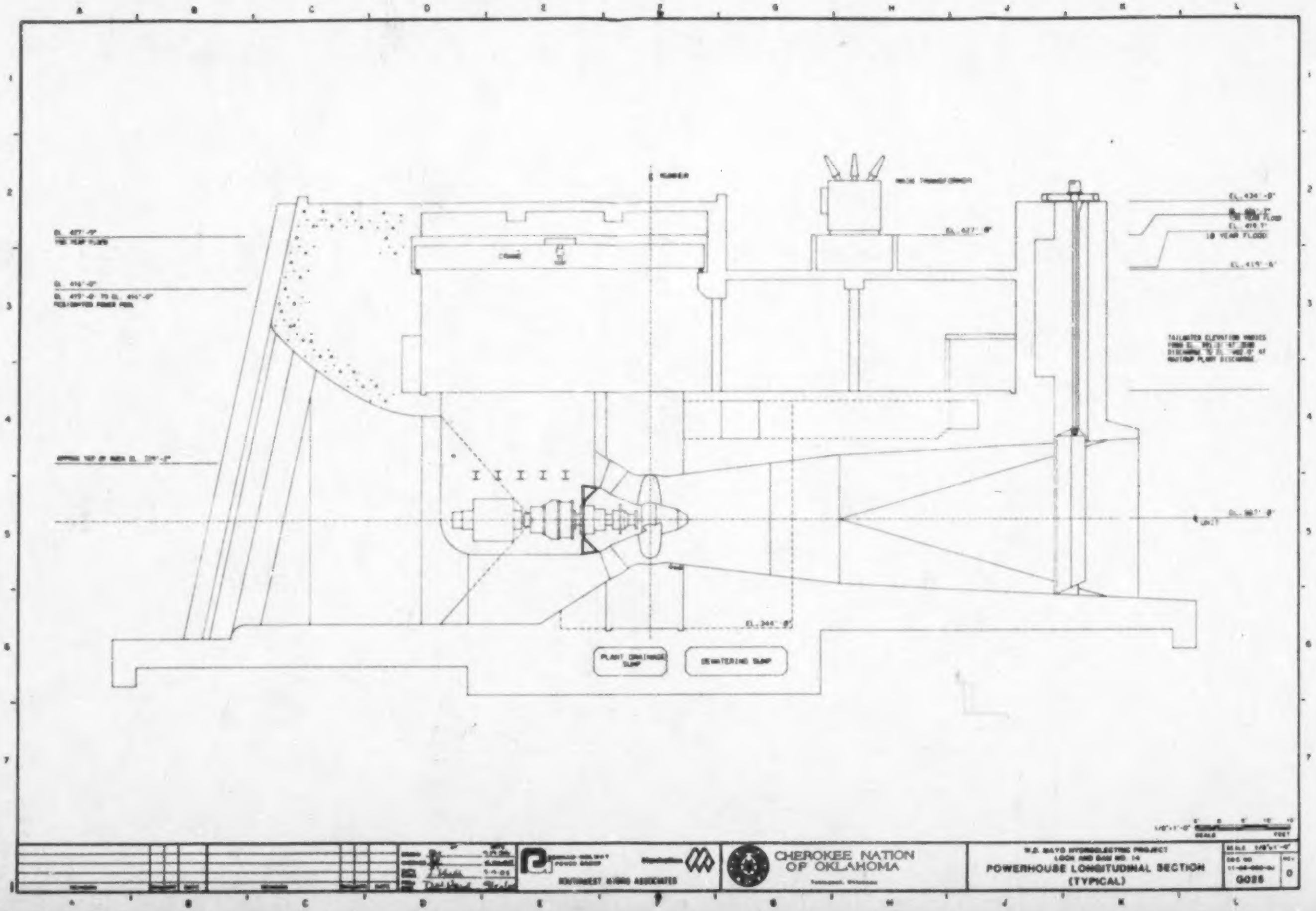
CRANE
RUNNER
MAIN TRANSFORMER
10 YEAR FLOOD
TAILWATER ELEVATION VARIES
PLANT DRAINAGE SUMP
DEWATERING SUMP
UNIT
SCALE
FEET
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
POWERHOUSE LONGITUDINAL SECTION (TYPICAL)
G025
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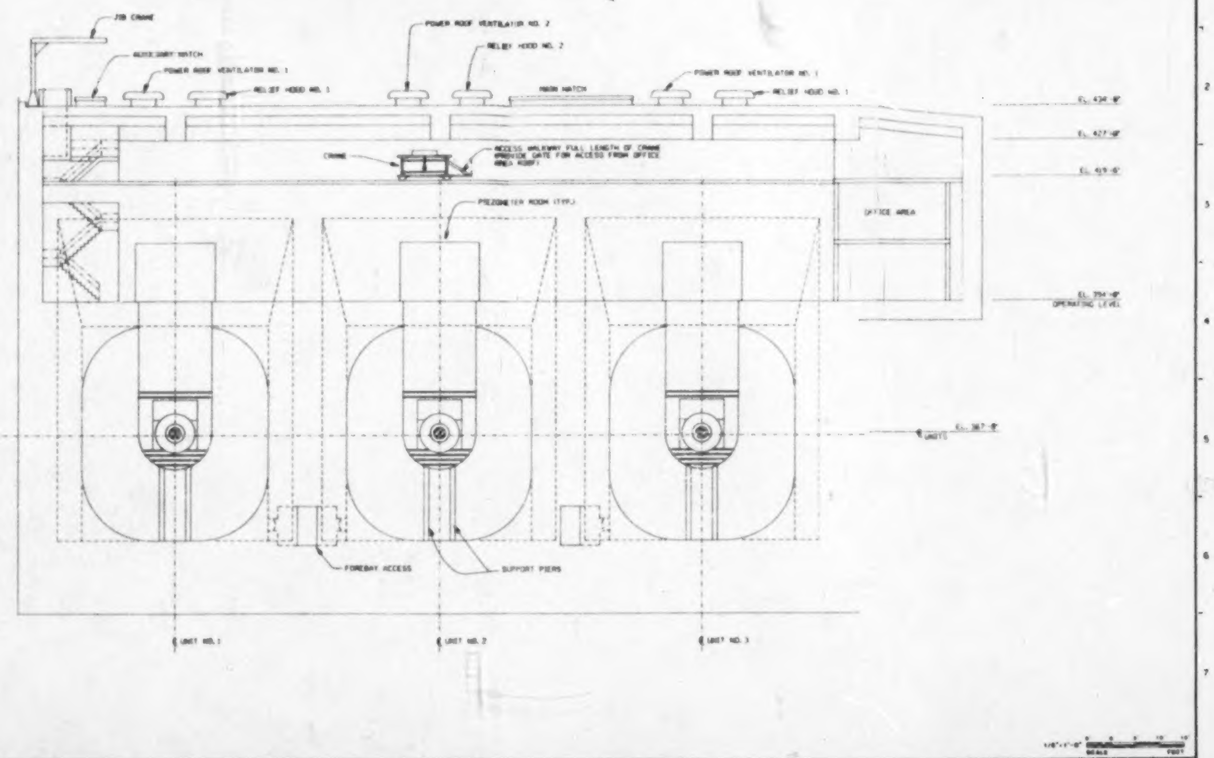
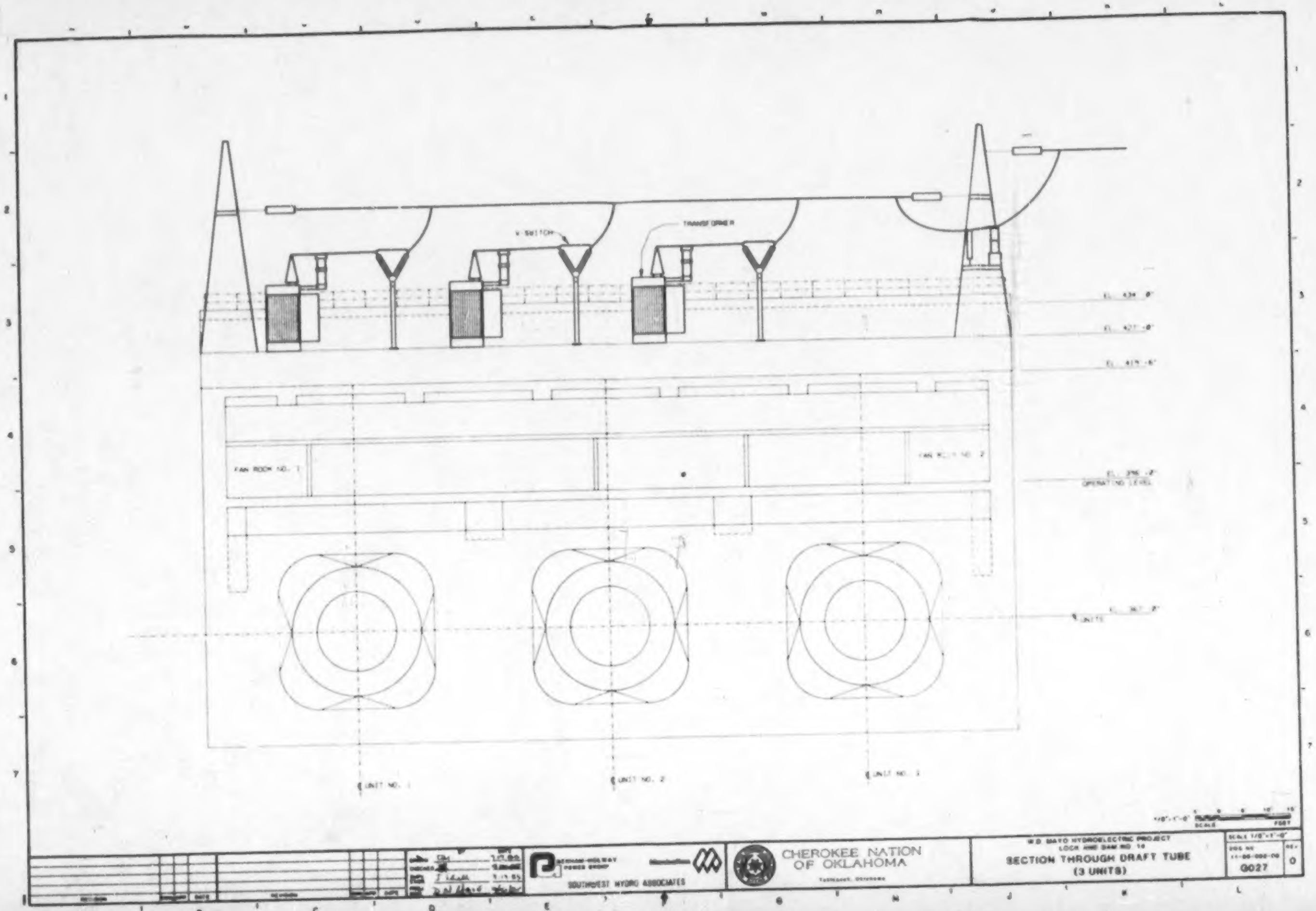

JIB CRANE
AUXILIARY HATCH
POWER ROOF VENTILATOR NO. 1
RELIEF HOOD NO. 1
POWER ROOF VENTILATOR NO. 2
RELIEF HOOD NO. 2
MAIN HATCH
POWER ROOF VENTILATOR NO. 1
RELIEF HOOD NO. 1
CRANE
ACCESS WALKWAY FULL LENGTH OF CRANE PROVIDE GATE FOR ACCESS FROM OFFICE AREA ROOF)
PIEZOMETER ROOM (TYP.)
OFFICE AREA
EL. 434'-0"
EL. 427'-0"
EL. 419'-6"
EL. 394'-0"
OPERATING LEVEL
UNITS
FOREBAY ACCESS
SUPPORT PIERS
℄ UNIT NO. 1
℄ UNIT NO. 2
℄ UNIT NO. 3
1/8" = 1'-0"
SCALE
FEET

SOUTHWEST HYDRO ASSOCIATES

CHEROKEE NATION
OF OKLAHOMA

W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
SECTION THROUGH GENERATOR PIT
(3 UNITS)

SCALE 1/8" = 1'-0"
0026
REV 0


V-SWITCH
TRANSFORMER
EL. 434'-0"
EL. 427'-0"
EL. 419'-6"
FAN ROOM NO. 1
FAN ROOM NO. 2
EL. 396'-0"
OPERATING LEVEL
EL. 367'-0"
℄ UNITS
℄ UNIT NO. 1
℄ UNIT NO. 2
℄ UNIT NO. 3
1/8"=1'-0"
SCALE
FEET
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION
OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
SECTION THROUGH DRAFT TUBE
(3 UNITS)
SCALE 1/8"=1'-0"
G027
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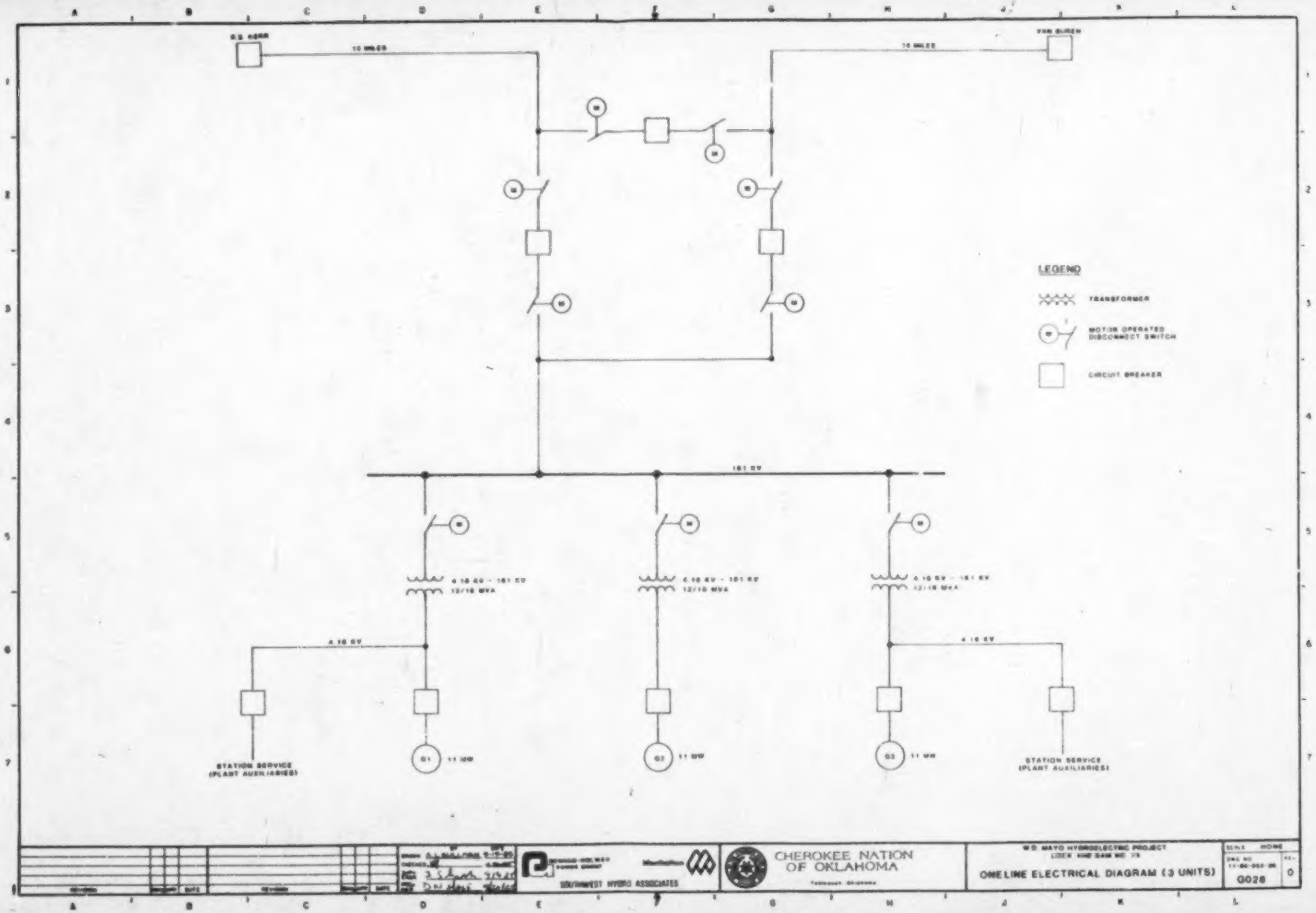
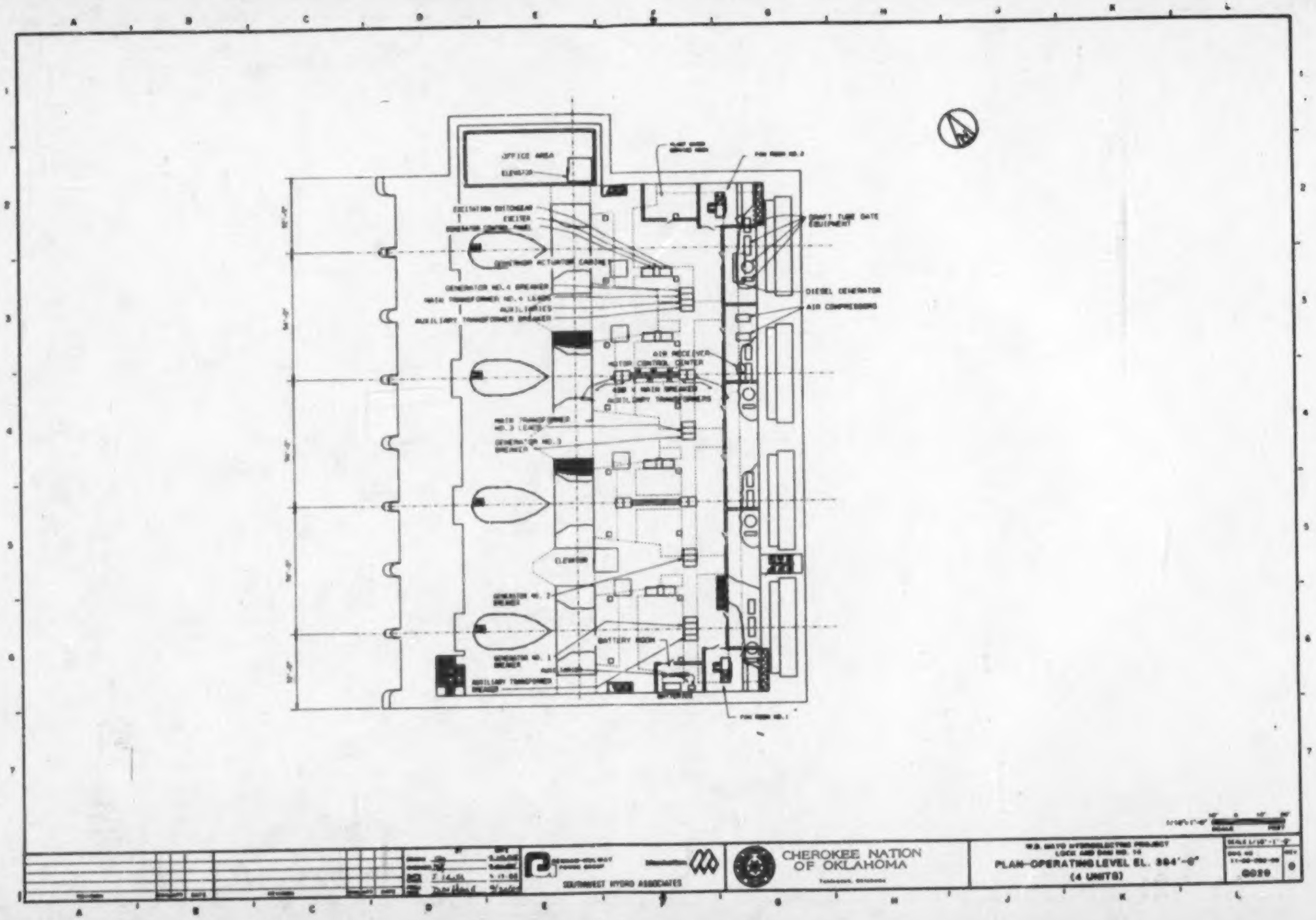
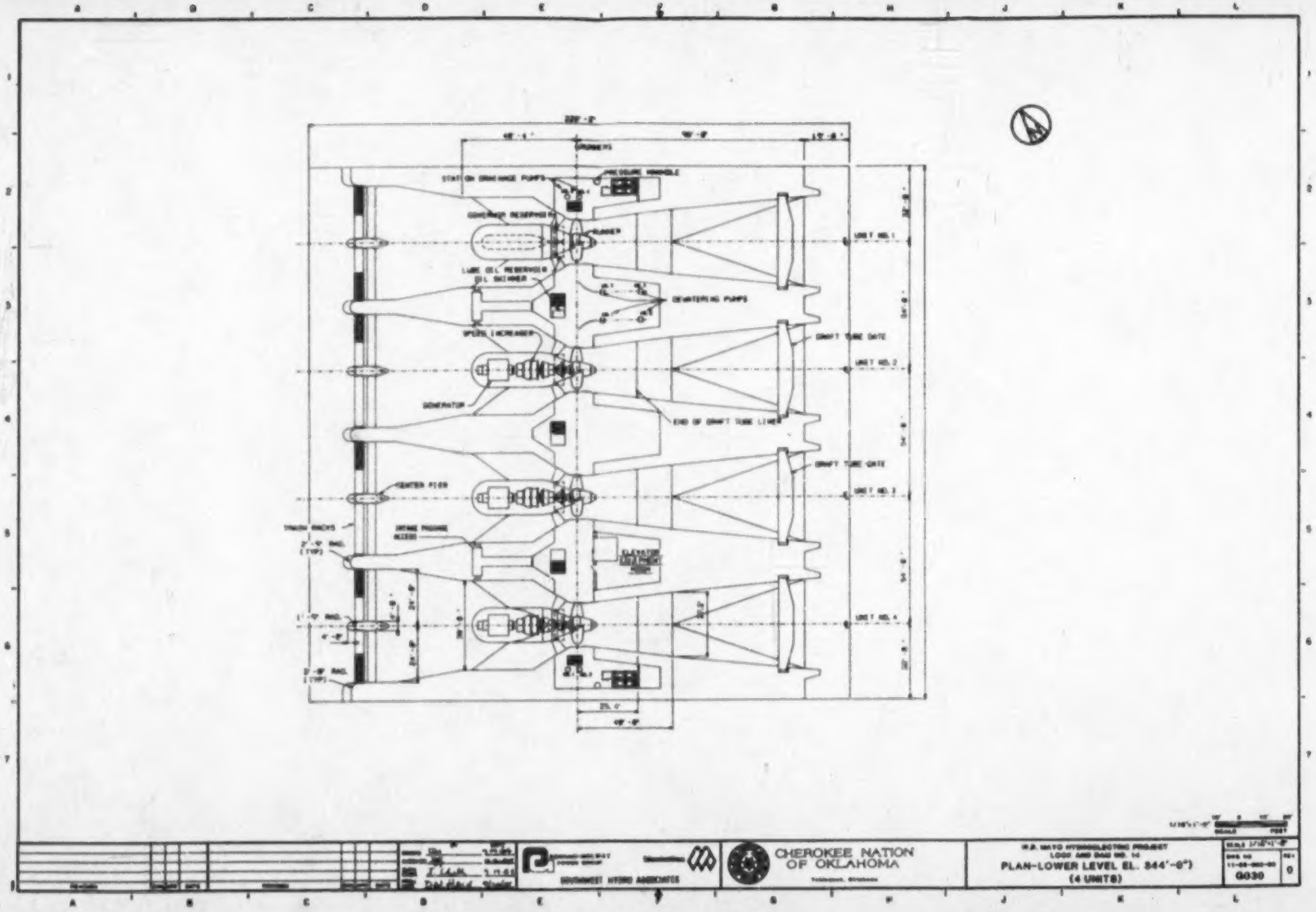

R.S. KERR
10 MILES
VAN BUREN
10 MILES
161 KV
4.16 KV - 161 KV
12/16 MVA
4.16 KV - 161 KV
12/16 MVA
4.16 KV - 161 KV
12/16 MVA
4.16 KV
4.16 KV
G1 11 MW
G2 11 MW
G3 11 MW
STATION SERVICE
(PLANT AUXILIARIES)
STATION SERVICE
(PLANT AUXILIARIES)
LEGEND
TRANSFORMER
MOTOR OPERATED DISCONNECT SWITCH
CIRCUIT BREAKER
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION
OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
ONELINE ELECTRICAL DIAGRAM (3 UNITS)
SCALE NONE
DWG NO
0028
REV
0


OFFICE AREA
ELEVATOR
EXCITATION SWITCHGEAR
EXCITER
GENERATOR CONTROL PANEL
GOVERNOR ACTUATOR CABINET
GENERATOR NO. 4 BREAKER
MAIN TRANSFORMER NO. 4 LEADS
AUXILIARIES
AUXILIARY TRANSFORMER BREAKER
AIR RECEIVER
MOTOR CONTROL CENTER
480 V MAIN BREAKER
AUXILIARY TRANSFORMERS
MAIN TRANSFORMER NO. 3 LEADS
GENERATOR NO. 3 BREAKER
ELEVATOR
GENERATOR NO. 2 BREAKER
GENERATOR NO. 1 BREAKER
BATTERY ROOM
AUXILIARY TRANSFORMER BREAKER
DRAFT TUBE GATE EQUIPMENT
DIESEL GENERATOR
AIR COMPRESSORS
FAN ROOM NO. 2
FAN ROOM NO. 1
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
PLAN-OPERATING LEVEL EL. 384'-0"
(4 UNITS)
A
B
C
D
E
F
G
H
J
K
L
1
2
3
4
5
6
7


RUNNERS
STATION DRAINAGE PUMPS
PRESSURE MANHOLE
GOVERNOR RESERVOIR
RUNNER
LUBE OIL RESERVOIR
OIL SKIMMER
DEWATERING PUMPS
SPEED INCREASER
DRAFT TUBE GATE
UNIT NO. 1
UNIT NO. 2
UNIT NO. 3
UNIT NO. 4
GENERATOR
END OF DRAFT TUBE LINER
CENTER PIER
TRASH RACKS
ELEVATOR EQUIPMENT ROOM
2'-0" RAD. (TYP)
1'-0" RAD.
49'-0"
SCALE
FEET
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION
OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
PLAN-LOWER LEVEL EL. 344'-0")
(4 UNITS)
G030
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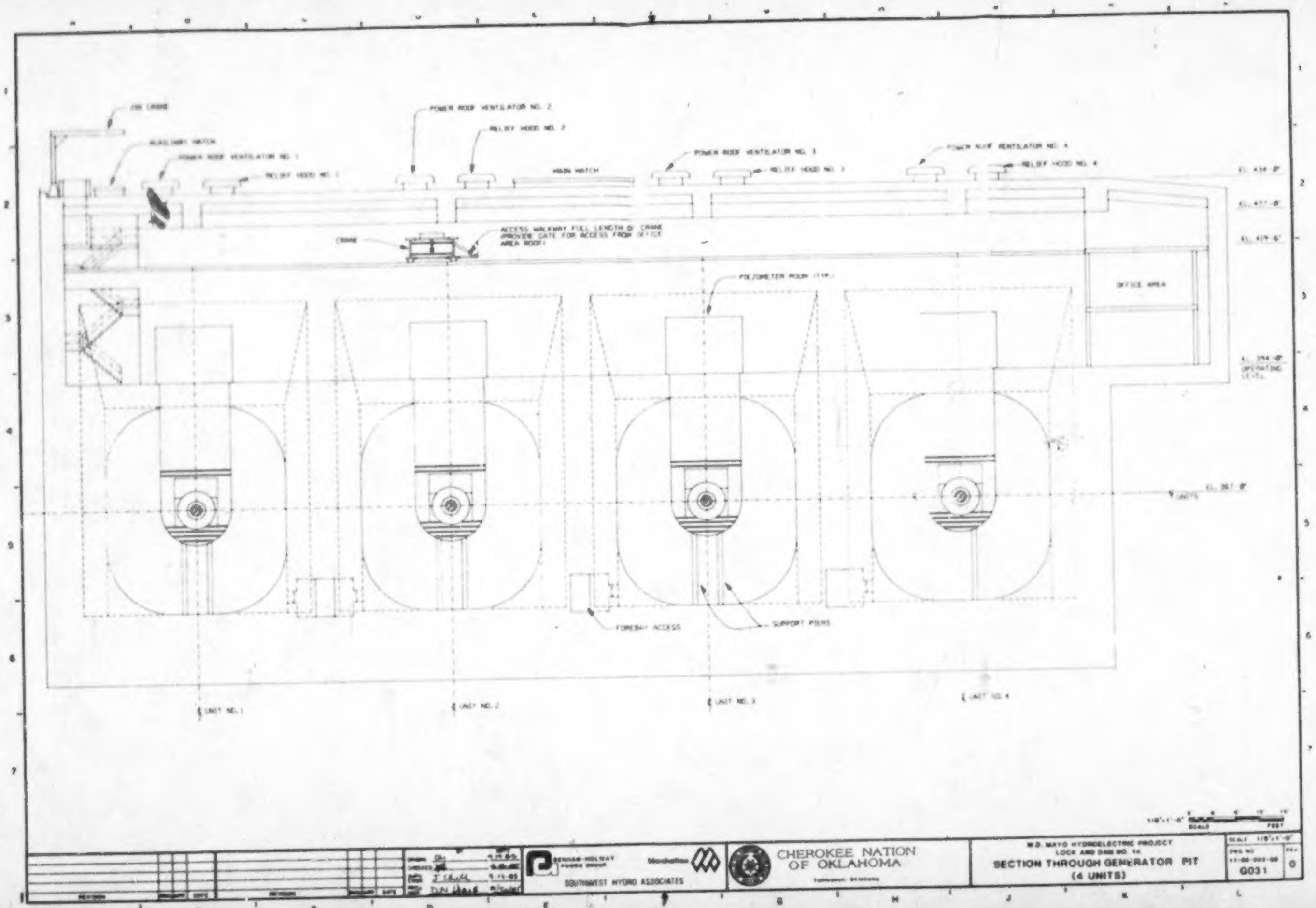
JIB CRANE
AUXILIARY HATCH
POWER ROOF VENTILATOR NO. 1
RELIEF HOOD NO. 1
POWER ROOF VENTILATOR NO. 2
RELIEF HOOD NO. 2
MAIN HATCH
POWER ROOF VENTILATOR NO. 3
RELIEF HOOD NO. 3
POWER ROOF VENTILATOR NO. 4
RELIEF HOOD NO. 4
CRANE
ACCESS WALKWAY FULL LENGTH OF CRANE (PROVIDE GATE FOR ACCESS FROM OFFICE AREA ROOF)
PIEZOMETER ROOM (TYP.)
OFFICE AREA
EL. 434'-0"
EL. 427'-0"
EL. 419'-6"
EL. 394'-0" OPERATING LEVEL
℄ UNITS EL. 387'-0"
FOREBAY ACCESS
SUPPORT PIERS
℄ UNIT NO. 1
℄ UNIT NO. 2
℄ UNIT NO. 3
℄ UNIT NO. 4
1/8"=1'-0" SCALE FEET
REVISION
REVISION
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
SECTION THROUGH GENERATOR PIT
(4 UNITS)
SCALE 1/8"=1'-0"
DWG NO
G031
REV
0
A
B
C
D
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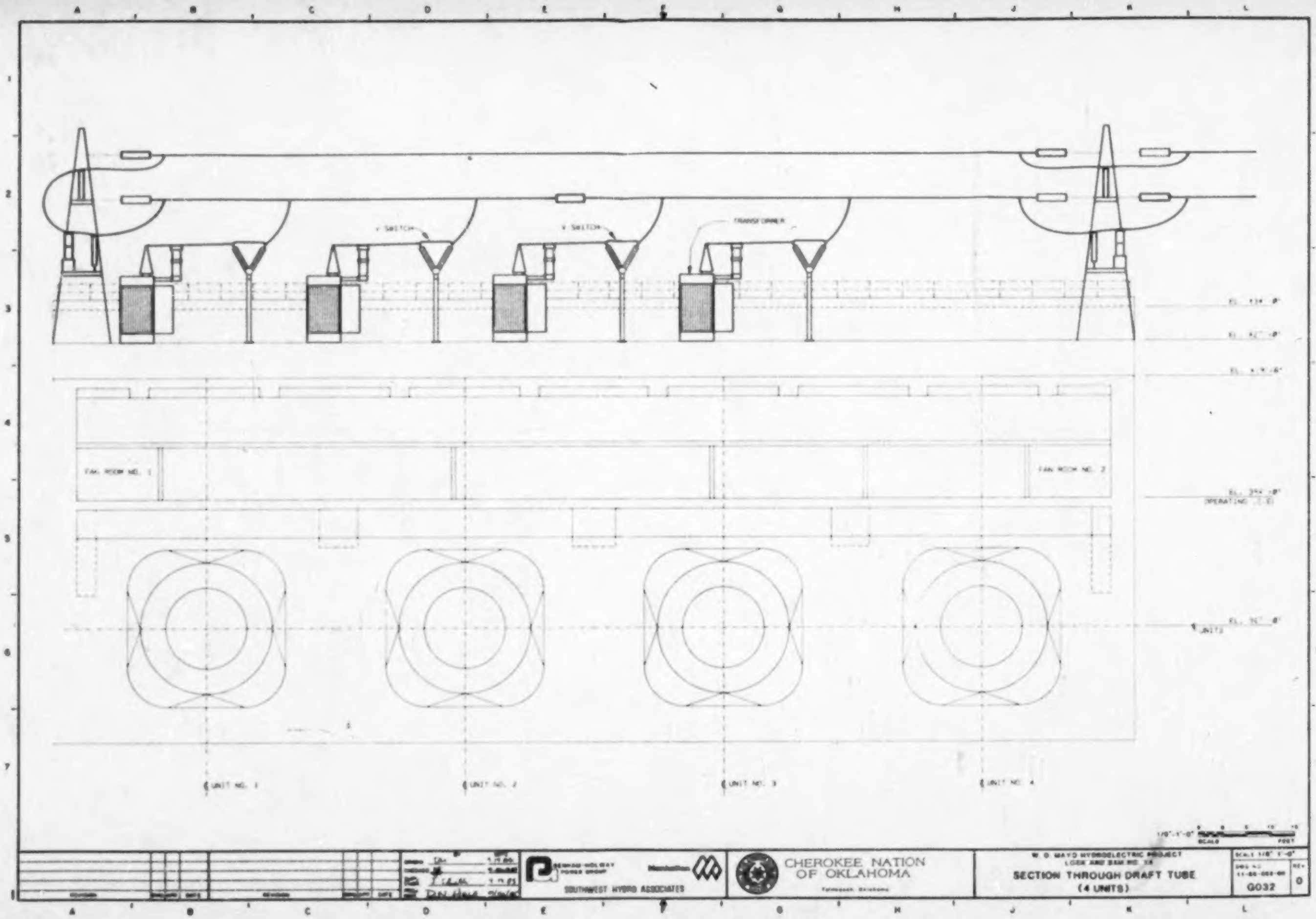
7


TRANSFORMER
V SWITCH
V SWITCH
FAN ROOM NO. 1
FAN ROOM NO. 2
OPERATING
UNITS
UNIT NO. 1
UNIT NO. 2
UNIT NO. 3
UNIT NO. 4
SCALE
FEET
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION
OF OKLAHOMA
W. D. MAYO HYDROELECTRIC PROJECT
SECTION THROUGH DRAFT TUBE
(4 UNITS)
G032
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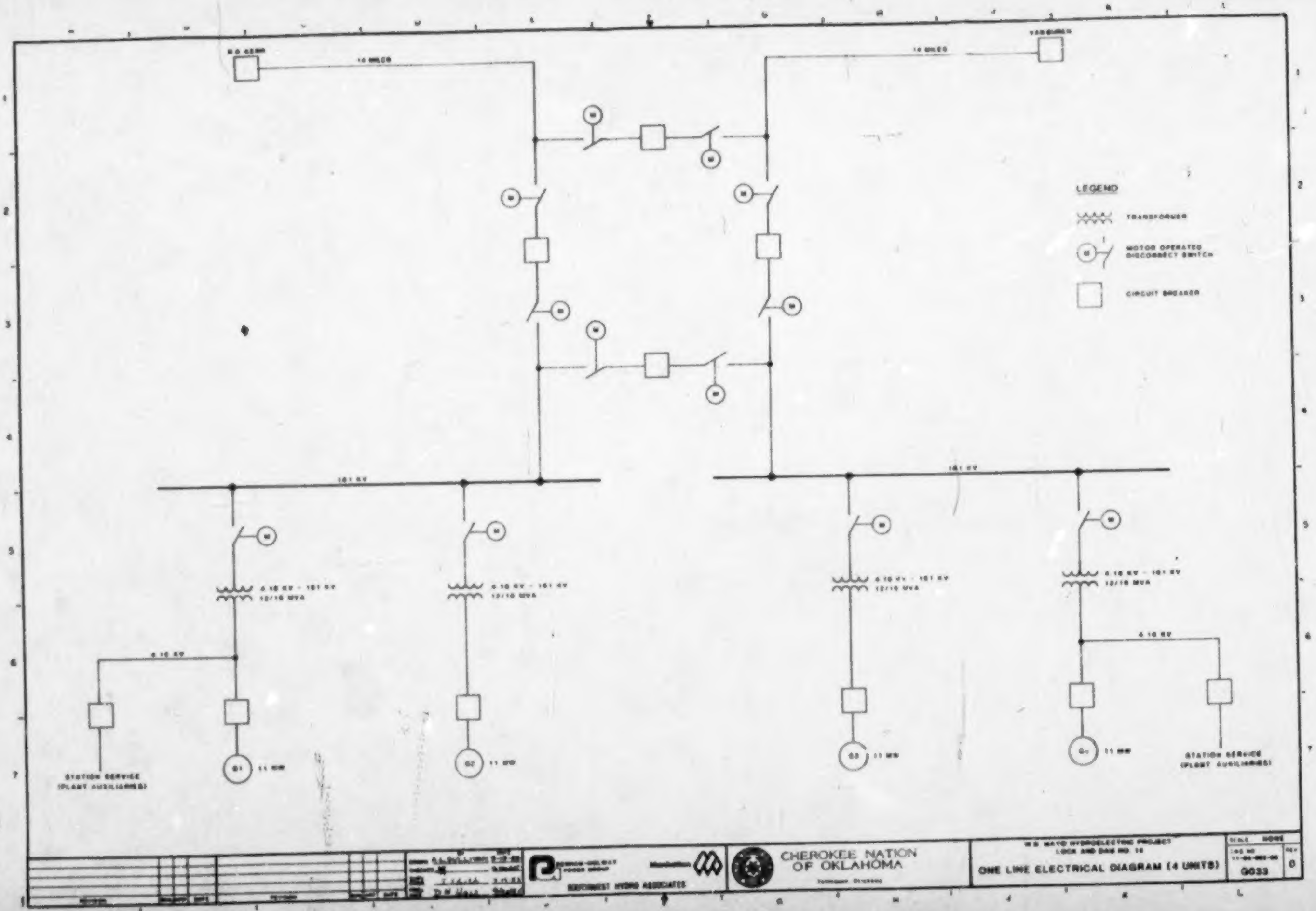
R S KERR
14 MILES
14 MILES
VAN BUREN
LEGEND
TRANSFORMER
MOTOR OPERATED DISCONNECT SWITCH
CIRCUIT BREAKER
161 KV
161 KV
6.16 KV - 161 KV
12/16 MVA
6.16 KV
STATION SERVICE
(PLANT AUXILIARIES)
G1
G2
G3
G4
11 MW
SOUTHWEST HYDRO ASSOCIATES
CHEROKEE NATION
OF OKLAHOMA
W.D. MAYO HYDROELECTRIC PROJECT
LOCK AND DAM NO. 14
ONE LINE ELECTRICAL DIAGRAM (4 UNITS)
SCALE NONE
G033
0